

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LEE BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42649

FILED

JUL 22 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On July 19, 2002, the district court convicted appellant, pursuant to a guilty plea, of three counts of sexual assault on a minor under sixteen years of age. The district court sentenced appellant to serve three consecutive terms of 60 to 240 months in the Nevada State Prison. On January 24, 2003, this court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹

On September 30, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On October 21, 2003, appellant amended his petition. Pursuant to NRS 34.750 and 34.770, the district court declined

¹Brown v. State, Docket No. 40764 (Order Dismissing Appeal, January 24, 2003).

to appoint counsel to represent appellant or to conduct an evidentiary hearing. On January 6, 2004, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than one year after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³ In order to demonstrate good cause in failing to file a post-conviction petition for writ of habeas corpus within the one-year deadline, a petitioner must show that an impediment external to the defense prevented him from complying with procedural default rules.⁴

In an attempt to demonstrate cause for the delay, appellant argued that he was waiting to file his petition until this court resolved his appeal, an appeal that was untimely filed. However, appellant's own assertions indicate that he knew a notice of appeal had not been docketed in this court as of November 12, 2002. Yet, appellant waited almost one year to file a habeas corpus petition in the district court. This delay was not reasonable.⁵ Appellant's delay in filing his petition for a writ of habeas corpus pending the outcome of his direct appeal did not constitute

²See NRS 34.726(1).

³See id.


⁴Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

⁵Id.

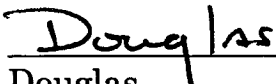
good cause to excuse his failure to comply with procedural rules.⁶ Therefore, we affirm the district court's order denying appellant's petition as time-barred.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Sally L. Loehrer, District Judge
Robert Lee Brown
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶See Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998) (the filing of a timely notice of appeal is a fundamental requirement, without which this court never obtains jurisdiction over an appeal).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).