

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD A. CAPRI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42714

FILED

AUG 13 2004

ORDER OF AFFIRMANCE

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

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

On March 7, 2000, the district court convicted Capri, pursuant to a guilty plea, of one count each of sexual assault on a minor under fourteen, and sexual assault. The district court sentenced Capri to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after ten years. Capri did not file a direct appeal.

On July 22, 2003, Capri filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Capri or to conduct an evidentiary hearing. On December 29, 2003, the district court denied Capri's petition. This appeal followed.

Capri filed his petition more than three years after entry of his judgment of conviction. Thus, Capri's petition was untimely filed.¹

¹See NRS 34.726(1).

Capri's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.²

In an attempt to demonstrate cause for the delay, Capri argued that as part of his guilty plea agreement, the district court was to retain jurisdiction over his case and modify his sentence if he were surgically castrated. Capri contended that the district court agreed to run his sentences concurrently, rather than consecutively, in that event. Capri further argued that the State was to pay for the surgical castration; on November 22, 2002, however, the district court entered an order stating that Capri was required to pay for the cost of the castration, as well as necessary transportation expenses.


Based upon our review of the record on appeal, we conclude that Capri failed to demonstrate good cause to excuse his untimely petition. We initially note that both the written guilty plea agreement and the oral plea canvass are devoid of any references to castration in exchange for a reduced sentence. However, even assuming Capri's allegation is true, he failed to adequately explain the length of his delay in filing the instant petition. On January 14, 2000, Capri's attorney filed an affidavit with the district court in which he stated, "Mr. Capri will pay for the cost of said surgical castration." Thus, Capri was aware during the statutory time period for filing a habeas petition that it was uncertain whether the State would pay for the surgery. Further, the district court issued its order stating that Capri was to pay for the surgery in November 2002; Capri did not file the instant petition until eight months later. As


²See id.


such, Capri did not establish good cause to overcome the procedural bar, and the district court did not err in denying Capri's petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Capri is not entitled to relief and that briefing and oral argument are unwarranted.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Sally L. Loehrer, District Judge
Richard A. Capri
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁴We have reviewed all documents that Capri has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Capri has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.