

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LEE GOFORTH,  
Appellant  
vs.,  
THE STATE OF NEVADA,  
Respondent.

No. 42795

FILED

JUL 27 2004

ORDER OF AFFIRMANCE

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

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

On October 19, 2000, the district court convicted Goforth, pursuant to a guilty plea, of two counts of possession of a visual presentation depicting sexual conduct of a person under sixteen years of age. The district court sentenced Goforth to serve two consecutive terms of twenty-four to seventy-two months in the Nevada State Prison. The sentence was suspended and Goforth was placed on probation for five years. Goforth did not file a direct appeal.

On April 22, 2002, Goforth filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Goforth filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Goforth or to conduct an evidentiary hearing. On January 27, 2004, the district court denied Goforth's petition. This appeal followed.

Goforth filed his petition more than a year after entry of the judgment of conviction. Thus, Goforth's petition was untimely filed.<sup>1</sup> Goforth's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>2</sup>

Goforth made various attempts to demonstrate good cause for his delay. First, Goforth argued that his trial counsel informed him that he did not have direct appeal or post-conviction appeal rights as a consequence of his guilty plea. Goforth contended that he did not learn that this information was inaccurate until "recently."

An appeal deprivation claim does not constitute good cause to excuse an untimely petition if the petitioner could reasonably have raised it during the statutory time period.<sup>3</sup> "[C]laims that counsel failed to inform the petitioner of the right to appeal or that the petitioner received misinformation about the right to appeal would be reasonably available to the petitioner within the statutory time period."<sup>4</sup> We further note that Goforth was informed of his limited appeal rights in his written guilty plea agreement, which he acknowledged having signed, read, and understood.

---

<sup>1</sup>See NRS 34.726(1).

<sup>2</sup>See id.


<sup>3</sup>Hathaway v. State, 119 Nev. 248, 253, 71 P.3d 503, 507 (2003); see also Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

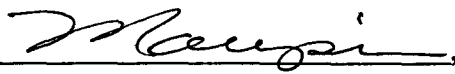
<sup>4</sup>Hathaway, 119 Nev. at 253, 71 P.3d at 508. This can be contrasted with a situation in which a petitioner reasonably believed that his counsel had filed an appeal on his behalf, and subsequently filed a post-conviction petition for a writ of habeas corpus within a reasonable time of learning that counsel failed to pursue an appeal. See id.


As such, he did not establish good cause to overcome his untimely petition on this basis.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Goforth is not entitled to relief and that briefing and oral argument are unwarranted.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>9</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Michael A. Cherry, District Judge  
Gary Lee Goforth  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

---

<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>9</sup>We have reviewed all documents that Goforth 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 Goforth 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.

For these reasons, Goforth failed to demonstrate good cause to excuse his untimely petition on the basis of his appeal deprivation claim.

Goforth next claimed that his untimely petition should be excused because he was under house arrest for more than a year and filed the instant petition at the earliest time following his release from house arrest. Goforth argued that "house arrest is second only to incarceration [in restraining] one's liberties," and as a result, he was unable to conduct legal research. We conclude that the burden of house arrest does not provide good cause to excuse Goforth's untimely petition,<sup>5</sup> especially in light of the fact that an incarcerated person is not exempted from the requirement of filing his petition within the statutory time period.

Lastly, Goforth argued that his conviction was unconstitutional based on the United State Supreme Court's recent decision in Ashcroft v. Free Speech Coalition.<sup>6</sup> Goforth contended that he could not raise this claim until the statutory time period had elapsed because the Supreme Court did not issue its opinion until April 16, 2002. Even assuming the Ashcroft decision constituted an "impediment external to the defense,"<sup>7</sup> Goforth failed to demonstrate its applicability to his case.

---

<sup>5</sup>Compare Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995) (providing that trial counsel's failure to send petitioner his files did not constitute good cause to excuse an untimely petition); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that borderline mental retardation does not constitute good cause for delay in filing petition).

<sup>6</sup>35 U.S. 234 (2002).

<sup>7</sup>Harris, 114 Nev. at 959, 964 P.2d at 787.