

IN THE SUPREME COURT OF THE STATE OF NEVADA

OMAR TERREL TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42852

FILED

AUG 19 2004

ORDER OF AFFIRMANCE

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

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

On September 2, 1997, the district court convicted Taylor, pursuant to an Alford plea,¹ of first-degree murder and manslaughter. The district court sentenced Taylor to serve a term of life in the Nevada State Prison with the possibility of parole for the murder conviction and a concurrent term of 26 to 120 months for the manslaughter conviction. Taylor did not file a direct appeal.

On November 3, 2003, Taylor filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that Taylor's petition was untimely filed and thus, procedurally barred. Moreover, the State specifically pleaded laches. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Taylor or to conduct an

¹North Carolina v. Alford, 400 U.S. 25 (1970).

evidentiary hearing. On January 27, 2004, the district court denied his petition. This appeal followed.

Taylor filed his petition almost six years after entry of the judgment of conviction. Thus, his petition was untimely filed.² Taylor's petition was procedurally barred absent a demonstration of good cause and prejudice.³ To show good cause, Taylor must demonstrate that an impediment external to the defense prevented him from complying with procedural default rules.⁴ Generally, a lower court's determination regarding the existence of good cause and prejudice will not be disturbed absent an abuse of discretion.⁵ Further, because the State specifically pleaded laches, Taylor was required to overcome the presumption of prejudice to the State.⁶

In an attempt to excuse his delay, Taylor argued that he paid another inmate in 1998 to assist him with his petition, but the inmate was released from prison, and he recently found someone else to assist him. We conclude Taylor did not establish that an impediment external to the defense prevented him from timely filing his petition.⁷ Taylor also failed to overcome the presumption of prejudice to the State. Based upon our

²See NRS 34.726(1).

³See id.

⁴Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁵Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).

⁶See NRS 34.800(2).


⁷See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that lack of legal assistance is not sufficient good cause).

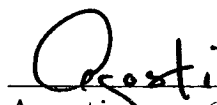
review of the record on appeal, we conclude Taylor has not shown good cause to excuse his delay.

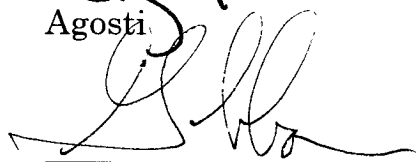
Finally, to the extent that Taylor's petition can be construed as a motion to correct an illegal sentence, we conclude that the district court did not err in denying his petition. Taylor's claims fall outside the narrow scope of claims permissible in a motion to correct an illegal sentence.⁸

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Taylor is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Omar Terrel Taylor
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).