


IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES FELDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37295

FILED

FEB 8 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant James Felder's post-conviction petition for a writ of habeas corpus.

On May 31, 1989, Felder was convicted, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon. Felder filed a direct appeal, and this court affirmed his conviction.¹ The remittitur issued on October 23, 1991.

On April 7, 1993, Felder filed a post-conviction petition for a writ of habeas corpus, alleging that his trial counsel was ineffective. The district court appointed counsel, and Felder filed a supplemental petition. The State opposed the petition. After conducting an evidentiary hearing, the district court denied the petition.

Our review of the record on appeal reveals that Felder's petition was untimely because it was filed approximately one and one-half years after this court issued the remittitur in the direct appeal.² Because Felder's petition was untimely, it is procedurally barred absent a showing

¹Felder v. State, 107 Nev. 237, 810 P.2d 755 (1991).

²See NRS 34.726(1).

of both good cause for the delay and prejudice.³ Although Felder acknowledged that his petition was untimely, he alleged good cause in that he “incorrectly believed that after the Nevada Supreme Court denied his appeal, his proper remedy was to file in federal court” and consequently, filed a post-conviction petition in federal district court. Although Felder was pursuing relief in federal court after his direct appeal, this court has rejected the proposition that pursuit of federal habeas relief constitutes good cause for filing an untimely petition.⁴ Because Felder failed to establish good cause for his untimely petition, it is procedurally barred, and we explicitly conclude that the petition should have been denied on that basis.⁵

We note, however, that the district court correctly determined that Felder’s petition lacked merit, and we affirm the district court’s ruling on that separate, independent ground.⁶ The district court found that counsel was not ineffective. The district court’s factual findings regarding a claim of ineffective assistance of counsel are entitled to

³See *id.*; Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994) (holding that good cause for purposes of excusing procedural default must be an impediment external to the defense that prevented defendant from complying with procedural rule).

⁴See Colley v. State, 105 Nev. 235, 773 P. 2d 1229 (1989).

⁵See generally Harris v. Reed, 489 U.S. 255, 263 (1989) (holding that procedural default does not bar federal review of claim on the merits unless state court rendering judgment relied “clearly and expressly” on procedural bar) (citation omitted).


⁶*Id.* at 264 n.10 (holding that as long as the state court explicitly invokes a state procedural bar, “a state court need not fear reaching the merits of a federal claim in an alternative holding.”).


deference when reviewed on appeal.⁷ Appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not demonstrated that the district court erred as a matter of law.

Accordingly, for the reasons stated in the attached order of the district court, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Joseph S. Pavlikowski, Senior Judge
Attorney General/Carson City
Clark County District Attorney
David M. Schieck
Clark County Clerk

⁷See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Filed
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DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,
8 Plaintiff,

9 -vs-

10 JAMES L. FELDER,
11 #0921958
12 Defendant.

Case No. C85183
Dept. No. Sr. Judge

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: 12/04/00
TIME OF HEARING: 9:00 A.M.

16 THIS CAUSE having come on for hearing before the Honorable JOSEPH
17 PAVLIKOWSKI, Chief District Judge, on the 4th day of December, 2000, the Petitioner being
18 present, represented by DAVID M. SCHIECK, ESQUIRE, the Respondent being represented
19 by STEWART L. BELL, District Attorney, by and through H. LEON SIMON, Deputy District
20 Attorney, and the Court having considered the matter, including briefs, transcripts, arguments
21 of counsel, and documents on file herein, now therefore, the Court makes the following findings
22 of fact and conclusions of law:

FINDINGS OF FACT

- 24 1. On September 13, 1988, James Felder, hereinafter Defendant, was charged by way of
25 Information with the crime of Murder with Use of a Deadly Weapon (Felony-NRS 200.030,
26 200.010, 193.165) for the August 2, 1988, killing of Gracie Windholz.
27 2. On September 20, 1988, Defendant entered a plea of not guilty. Thereafter, a jury trial
28 ensued wherein Defendant was found guilty of Murder of the First Degree with Use of a Deadly

1 Weapon. The facts adduced at trial include that: Felder had met the victim, Gracie Windholz,
2 a slot supervisor, and became friendly with her and her female companion, Brenda Schmitberger,
3 on a series of gambling trips he had made to Las Vegas from his home in South Carolina. At
4 the time of the murder, Felder was deeply in debt and on his last trip to Las Vegas he had
5 borrowed a .25 caliber semi-automatic pistol, later positively identified as the murder weapon,
6 from the sister of his friend, companion, and cousin, Kerry Durr, in South Carolina and brought
7 the gun to Las Vegas. The murder weapon was found in Felder's hotel room after the murder
8 along with a pair of shoes with human blood spots which Felder claimed was fish blood he had
9 gotten on the shoes while fishing. On the day of the murder Felder picked Brenda up from her
10 place of employment claiming he couldn't awaken Gracie and took Brenda to the home Gracie
11 and Brenda shared. When Felder opened the door Brenda saw blood on the floor. Felder
12 entered the house and brought out a ransom note demanding \$200,000.00 for Gracie's safety.
13 Felder asked Brenda to raise half of the ransom. It was determined that the ransom note was
14 printed on the same type of printer and paper owned by Felder and a handwriting expert
15 positively identified hand written insertions on the purported ransom note as being in Felder's
16 handwriting.

17 3. On May 25, 1989, Defendant was sentenced to two (2) consecutive sentences of Life with
18 the Possibility of Parole on the First Degree Murder and Use of a Deadly Weapon convictions.
19 A Judgment of Conviction was filed May 31, 1989.

20 4. On April 30, 1991, the Nevada Supreme Court concluded that the Defendant's
21 contentions on appeal were without merit and affirmed Defendant's conviction. Felder v. State,
22 107 Nev. 237, 810 P.2d 755 (1991). Thereafter, Defendant filed with the United States Supreme
23 Court a Petition for Writ of Certiorari. Defendant's writ was denied on October 7, 1991.
24 Defendant then filed a Petition for a Writ of Habeas Corpus in the United States District Court
25 for the District of Nevada.

26 5. On December 30, 1992, U.S. District Court Judge Edward C. Reed issued an order
27 recommending that Defendant voluntarily dismiss his petition due to the fact that it contained
28 both exhausted and unexhausted claims. Justice Reed also urged Defendant to proceed through

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