

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRENCE WINN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43428

FILED

FEB 16 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rubalcava*
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; Joseph T. Bonaventure, Judge.

On March 7, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count each of robbery with the use of a deadly weapon and attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 24 to 60 months in the Nevada State Prison for the robbery conviction, plus two consecutive terms of 96 to 240 months for the attempted murder conviction. Appellant did not file a direct appeal.

On August 7, 2003, appellant 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, the district court declined to appoint counsel to represent appellant. After conducting an

evidentiary hearing on the issue of good cause, the district court denied appellant's petition on May 4, 2004. This appeal followed.

Appellant filed his petition approximately two and one half years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.²

In an attempt to demonstrate good cause for the delay, appellant argued that he was under the impression that a direct appeal had been filed on his behalf. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause for the delay.

At the evidentiary hearing, trial counsel testified that appellant never asked him to file an appeal. The district court specifically found that trial counsel's testimony was more credible than appellant's testimony. Our review of the record reveals that the district court's finding is supported by substantial evidence and is not clearly wrong.³ Therefore, we affirm the order of the district court denying appellant's petition as procedurally barred.


¹See NRS 34.726(1).

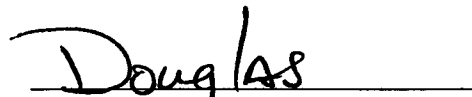
²See id.

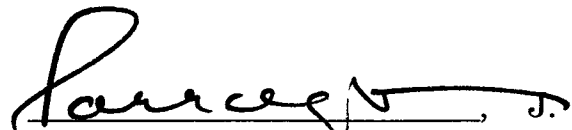
³See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge
Terrence Winn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).