

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORDANYS GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43611

FILED

NOV 03 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 Ordanys Garcia's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On May 22, 2001, the district court convicted Garcia, pursuant to a guilty plea, of robbery. The district court sentenced Garcia to serve a term of 62 to 156 months in the Nevada State Prison. This court affirmed Garcia's judgment of conviction and sentence on appeal.¹ The remittitur issued on December 3, 2002.

On February 12, 2004, Garcia filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Garcia v. State, Docket No. 37985 (Order of Affirmance, November 8, 2002).

State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Garcia or to conduct an evidentiary hearing. On June 4, 2004, the district court denied Garcia's petition. This appeal followed.

Garcia filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, Garcia's petition was untimely filed.² Garcia's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³

In an attempt to demonstrate good cause for his delay, Garcia argued that he is not time-barred because he "has continuously tried to correct the violations of his rights . . . by filing appeals and motions with [the district court] and the Supreme Court."⁴ Based upon our review of the record on appeal, we conclude Garcia has not demonstrated why he was unable to raise his claims in a timely petition.

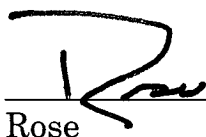
²See NRS 34.726(1).


³See *id.*

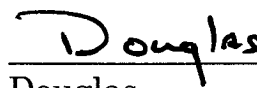
⁴On December 8, 2003, Garcia filed a "motion for strict enforcement of the plea agreement," which the district court denied on December 30, 2003.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Garcia is not entitled to relief and that briefing and oral argument are unwarranted.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶

 _____, J.
Rose

 _____, J.
Maupin

 _____, J.
Douglas

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have reviewed all documents that Garcia 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 Garcia has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Jennifer Togliatti, District Judge
Ordanys Garcia
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk