

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICARDO MACIAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43857

FILED

JUN 16 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

In March 2002, pursuant to a plea agreement, appellant Ricardo Macias pled guilty to second-degree murder with use of a deadly weapon. On May 14, 2002, a judgment of conviction was entered accordingly. Macias received a sentence of two consecutive terms of life in prison with the possibility of parole after ten years. He did not pursue a direct appeal, but on November 19, 2003, he filed a post-conviction habeas petition claiming that, due to his counsel's failure to adequately investigate his mental capacity, he received ineffective assistance of counsel and his plea was not knowing and voluntary. The district court denied the petition in August 2004, primarily because it was untimely.

NRS 34.726(1) provides that absent a showing of good cause for delay, a petition challenging the validity of a judgment or sentence

must be filed within one year after entry of the judgment of conviction (or within one year after this court issues its remittitur, if a direct appeal is taken). Good cause requires the petitioner to demonstrate that the delay was not his fault and that dismissal of the petition will unduly prejudice him.¹

Macias filed his habeas petition over six months past the deadline set forth in NRS 34.726(1). Nevertheless, he contends that he had good cause for the untimeliness because he did not have counsel after his judgment of conviction and "a legally untrained defendant cannot be expected to understand, comprehend or implement Nevada's court rules and statutes." This contention does not show good cause. As this court has held, an assertion that inadequate legal assistance as well as limited intelligence prevented a petitioner from raising a claim in a previous habeas petition did not establish cause for a successive petition under NRS 34.810.² Moreover, Macias has not articulated any undue prejudice


¹NRS 34.726(1).


²Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), abrogation in part on other grounds recognized by State v. Haberstroh, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003); see also Crump v. Warden, 113 Nev. 293, 302, 934 P.2d 247, 252 (1997) (explaining that to show good cause, a petitioner must demonstrate that an impediment external to the defense prevented him from complying with procedural default rules).

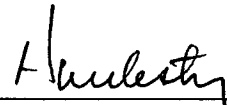
resulting from dismissal of his petition. Although he suggests that he could have had a viable defense at trial based on his mental capacity, he has not alleged specific facts to support this suggestion.

We conclude that the district court did not err in denying his petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. John S. McGroarty, District Judge
Kirk T. Kennedy
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk