

IN THE SUPREME COURT OF THE STATE OF NEVADA

MOHAMMAD A. ALWEDAINANI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43906

FILED

MOHAMMAD A. ALWEDAINANI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43934 JAN 07 2005

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

MOHAMMAD A. ALWEDAINANI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43935

MOHAMMAD A. ALWEDAINANI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43936

MOHAMMAD A. ALWEDAINANI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43937

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court dismissing appellant's post-conviction petitions for writs of habeas

corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. We elect to consolidate these appeals for disposition.¹

On October 2, 1997, the district court convicted appellant of multiple burglaries and robberies in five separate district court cases. In district court case number C143709, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary and three counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve consecutive terms totaling 232 to 1032 months in the Nevada State Prison. The district court ordered this sentence to run consecutively to a sentence on a California conviction. No direct appeal was taken.

In district court case number C143710, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling 92 to 408 months in the Nevada State Prison. The district court ordered this sentence to run consecutively to district court case number C143709. No direct appeal was taken.

In district court case number C143711, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary and two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling 70 to 312 months in the Nevada State Prison. The district court ordered this sentence to run

¹See NRAP 3(b).

concurrently with the sentences imposed in C143709 and C143710. No direct appeal was taken.

In district court case number C143712, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary and two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling 70 to 312 months in the Nevada State Prison. The district court ordered this sentence to run concurrently with the sentences imposed in C143709 and C413710. No direct appeal was taken.

In district court case number C143746, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary and two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling 70 to 312 months in the Nevada State Prison. The district court ordered this sentence to run concurrently with the sentences imposed in C143709 and C413710. No direct appeal was taken.

On June 8, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in each of the district court cases. The State opposed the petitions arguing that they were untimely filed. Moreover, the State specifically pleaded laches. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. The district court dismissed appellant's petitions. These appeals followed.

Appellant filed his petitions more than six and one-half years after entry of the judgments of conviction. Thus, appellant's petitions

were untimely filed.² Appellant's petitions were procedurally barred absent a demonstration of good cause and prejudice.³ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁴

In an attempt to excuse his procedural defects, appellant claimed that his trial counsel failed to file or advise him of his right to a direct appeal and post-conviction remedies. Appellant argued that his trial counsel incorrectly informed him that he waived filing a direct appeal by entry of his guilty plea. He claimed that he only recently learned of counsel's misrepresentation.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petitions. Appellant failed to demonstrate good cause for his six and one-half year delay. A claim that counsel failed to file or advise a defendant about the right to a direct appeal does not constitute good cause to excuse an untimely petition.⁵ Appellant's claim that he received misinformation about the right to appeal would have been reasonably available to appellant during the one-year statutory time period, and thus, this claim does not constitute cause to excuse appellant's six and one-half year

²See NRS 34.726(1).

³See id.

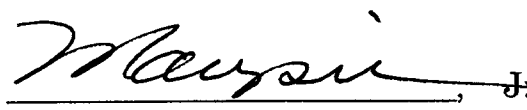
⁴See NRS 34.800(2).

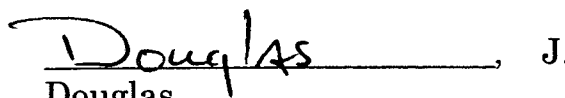
⁵See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

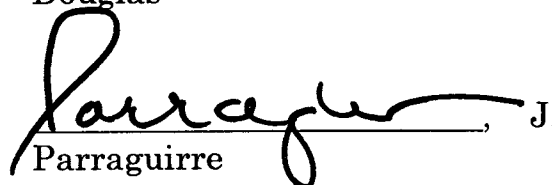
delay.⁶ Appellant's claim that he was not advised about post-conviction remedies does not constitute good cause to excuse the delay.⁷ Appellant further failed to overcome the presumption of prejudice to the State.

Having reviewed the records 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.⁸ Accordingly, we

ORDER the judgments of the district court AFFIRMED.


Maupin


Douglas


Parraguirre

cc: Hon. Jackie Glass, District Judge
Hon. Lee A. Gates, District Judge
Mohammad A. Alwedainani
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

⁷See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁸See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).