

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE CRUZ FUNEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43960

FILED

FEB 1 6 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Jose Funez's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On January 30, 2003, the district court convicted Funez, pursuant to an Alford¹ plea, of one count of sexual assault on a minor under the age of sixteen (count I), and one count of lewdness with a minor under the age of fourteen (count II). The district court sentenced Funez to serve a term of life in the Nevada State Prison with the possibility of parole after ten years for count II, and a concurrent term of five to twenty years for count I. Funez did not file a direct appeal.

On May 24, 2004, Funez 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 and 34.770, the district court declined to appoint counsel to represent Funez or to conduct an

¹See North Carolina v. Alford, 400 U.S. 25 (1970).

evidentiary hearing. On August 30, 2004, the district court denied Funez's petition. This appeal followed.

Funez filed his petition more than one year after entry of his judgment of conviction. Thus, Funez's petition was untimely filed.² Funez's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.³

In an attempt to demonstrate cause for the delay, Funez contended that he asked his trial counsel to file a direct appeal, but his counsel failed to do so.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that Funez's petition was procedurally barred. An appeal deprivation claim does not constitute good cause to excuse an untimely petition if the petitioner could reasonably have raised it during the statutory time period for filing a post-conviction habeas petition.⁴ Funez failed to demonstrate that he believed that a direct appeal had been filed on his behalf, and that he filed the instant habeas corpus petition within a reasonable time of learning otherwise.⁵ We therefore affirm the district court's denial of Funez's petition.

²See NRS 34.726(1).

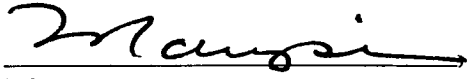
³See id.

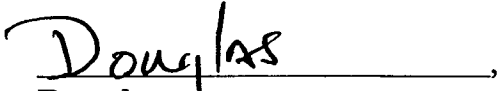
⁴Hathaway v. State, 119 Nev. 248, 253-54, 71 P.3d 503, 507 (2003); see also Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

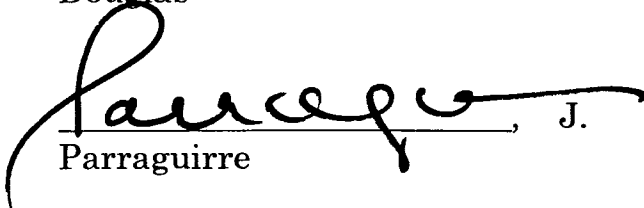
⁵See Hathaway, 119 Nev. at 255, 71 P.3d at 508.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Funez is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. Lee A. Gates, District Judge
Jose Cruz Funez
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).