

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANKLIN HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44048

FILED

FEB 16 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 Franklin Howard's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On November 27, 2002, the district court convicted Howard, pursuant to a guilty plea, of attempted burglary and grand larceny. The district court sentenced Howard to two consecutive terms of 12 to 60 months in the Nevada State Prison. No direct appeal was taken.

On May 3, 2004, Howard 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 Howard or to conduct an evidentiary hearing. On August 4, 2004, the district court dismissed Howard's petition. This appeal followed.

Howard filed his petition more than one year after entry of the judgment of conviction. Thus, Howard's petition was untimely filed and procedurally barred absent a demonstration of good cause for the delay and prejudice.¹

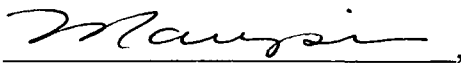
In an attempt to demonstrate good cause for the delay, Howard argued that his petition was initially denied, apparently by the district court, pending an appeal to this court.² NRS 34.726(1) provides that a habeas petition must be filed within one year after entry of the judgment of conviction or, if an appeal from the judgment of conviction is sought, within one year after this court issues its remittitur. Here, Howard did not appeal his judgment of conviction; therefore, he was required to file his petition within one year after entry of the judgment of conviction. Based upon our review of the record on appeal, we conclude that Howard failed to demonstrate good cause for the untimely filing of his petition.

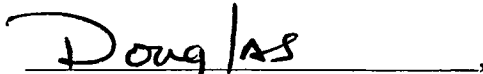
¹See NRS 34.726(1).

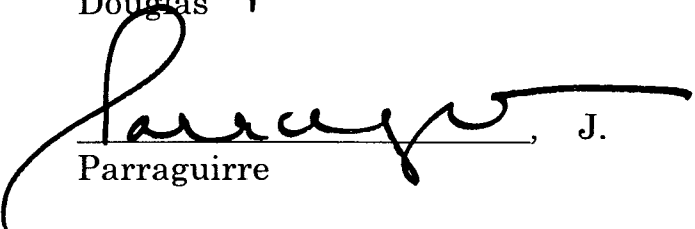
²On November 21, 2003, we dismissed Howard's appeal from an order of the district court denying "proper council in plea agreement in case #C185755" for lack of jurisdiction, as the order was not appealable. Howard v. State, Docket No. 42295 (Order Dismissing Appeal, November 21, 2003).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Howard is not entitled to relief and that briefing and oral argument are unwarranted.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Franklin Howard
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).