

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH D. SYLVIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44117

FILED

DEC 02 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Keith D. Sylvia's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On January 3, 2002, the district court convicted Sylvia, pursuant to a guilty plea, of robbery with the use of a deadly weapon. The district court sentenced Sylvia to serve a term of 156 months in the Nevada State Prison with parole eligibility after 36 months and an equal and consecutive term for the deadly weapon enhancement. No appeal was taken.

On July 21, 2004, Sylvia 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 Sylvia or to conduct an evidentiary hearing. On September 27, 2004, the district court denied Sylvia's petition. This appeal followed.

Appellant filed his petition more than two years after entry of the judgment of conviction. Thus, Sylvia's petition was untimely filed.¹


¹See NRS 34.726(1).

Sylvia's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.²

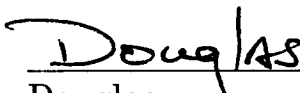
In an attempt to demonstrate good cause for the delay, Sylvia explained that he was unaware that he "could file for relief" and that his counsel failed to inform him of his right to appeal. However, counsel's alleged failure to advise Sylvia of his right to appeal does not constitute good cause to excuse the untimely filing of his petition.³ Sylvia failed to otherwise demonstrate good cause for his delay.⁴

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

²See id.

³See Harris v. Warden, 114 Nev. 956, 960, 964 P.2d 785, 788 (1998).

⁴See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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

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