

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARD JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44351

FILED

FEB 24 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 dismissing a post-conviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

On February 11, 2002, the district court convicted appellant, pursuant to a jury verdict, of one count of driving under the influence with two or more prior convictions (a felony). The district court sentenced appellant to serve a term of twelve to thirty-six months in the Nevada State Prison. This court affirmed appellant's conviction on appeal.¹ The remittitur issued on December 17, 2002.


On October 20, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On November 5, 2004, the district court dismissed appellant's petition. This appeal followed.


¹Johnson v. State, Docket No. 39245 (Order of Affirmance, November 20, 2002).

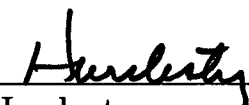
Appellant filed his petition approximately twenty-two months after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³ Appellant did not attempt to demonstrate good cause for the delay. Therefore, we conclude that the district court did not err in determining that appellant's petition was procedurally time-barred.

Having reviewed the record 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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

²See NRS 34.726(1).

³See *id.*

⁴See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Andrew J. Puccinelli, District Judge
Leonard Johnson
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk