

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY D. CANTRELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45054

FILED

MAY 19 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's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On December 4, 2003, the district court convicted appellant, pursuant to a guilty plea, of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a term of 24 to 60 months in the Nevada State Prison, to be served concurrently with the sentence imposed in district court case number C192154. Appellant did not file a direct appeal.

On December 21, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 6, 2005, the state filed an opposition and motion to dismiss the petition. On March 8, 2005, appellant filed a reply. 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 March 23,

2004, the district court entered an order denying appellant's petition. This appeal followed.

Appellant filed his petition more than one year after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.²

In the petition, appellant argued that the petition was timely filed and did not demonstrate any cause for the delay in filing the petition. In his reply to the motion to dismiss, appellant argued that the delay in filing the petition was not his fault. We note, however, that the reply was untimely³ and was not filed until one day after the district court's oral denial of appellant's petition. We conclude that the district court did not err by not considering the reply when resolving appellant's petition.⁴ We further conclude that appellant failed to demonstrate good cause for the delay in filing the petition and the district court did not err in denying appellant's petition.

¹See NRS 34.726(1).

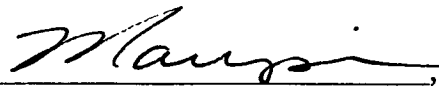
²See id.

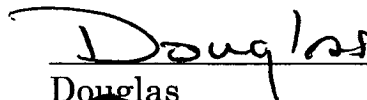
³See NRS 34.750(4).

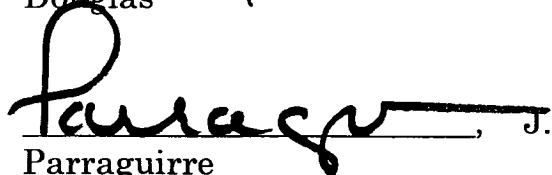
⁴See NRS 34.750(5).

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge
Barry D. Cantrell
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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