IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES B. HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45438

FILED

DEC 21 2005

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

ORDER OF AFFIRMANCE

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

On October 21, 2003, the district court convicted appellant, pursuant to a guilty plea, of forgery. The district court sentenced appellant to serve a term of eighteen to forty-eight months in the Nevada State Prison, suspended the sentence, and placed appellant on probation. On January 27, 2005, the district court revoked probation, executed the original sentence and amended the judgment of conviction to include 187 days of credit. Appellant did not file a direct appeal.

On March 29, 2005, appellant 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 appellant or to conduct an evidentiary hearing. On August 9, 2005, the district court denied appellant's petition. This appeal followed.

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Appellant filed his petition approximately seventeen months 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 and prejudice.[2]

First, appellant contended that the one-year statutory time limit did not begin to run until the filing of his amended judgment of conviction. Appellant's claims arise from the proceedings leading to the original judgment of conviction and could have been previously raised in a timely petition filed on or before October 21, 2004.[3] Thus, the filing of the amended judgment of conviction did not provide good cause.

Next, appellant contended that his counsel did not inform him that he could file a direct appeal. Appellant offered no explanation whatsoever regarding how this excused his late petition. Appellant did not establish that an impediment external to the defense prevented him from raising his claims earlier.[4] An appeal deprivation claim does not constitute good cause to excuse an untimely petition.[5] Thus, we conclude that the district court did not err in denying appellant's petition as procedurally barred.

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[1]See NRS 34.726(1).

[2]Id.

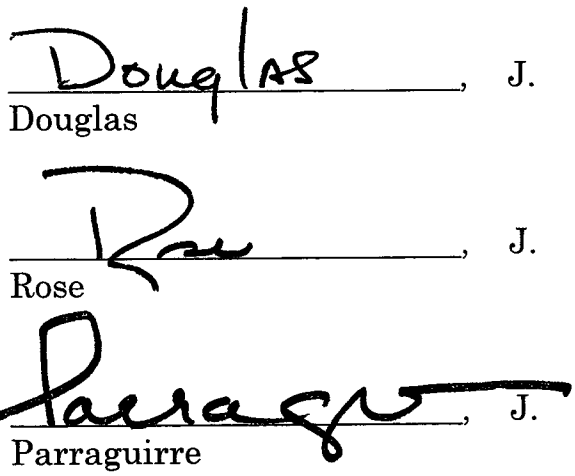
[3]Sullivan v. State, 120 Nev. 537, 541, 96 P3d 761, 764-65 (2004).

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

[5]See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

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.[6] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[7]



Douglas, J.

Rose, J.

Parraguirre, J.

cc: Hon. Donald M. Mosley, District Judge
Charles B. Harris
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

[7]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.