

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRAVIS DESMOND WHEELER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45534

**FILED**

**JAN 23 2006**

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Travis Desmond Wheeler's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

Wheeler pleaded guilty to two counts of attempted possession of a stolen motor vehicle, and was sentenced to serve a prison sentence of 18 to 72 months on count one, and 24 to 60 months on count 2, ordered to run consecutive to each other on July 3, 2002. Wheeler subsequently filed a habeas petition on March 29, 2004, more than 1 year following the filing of the judgment of conviction. On June 14, 2005, the district court dismissed Wheeler's petition because it was procedurally barred.

"To establish good cause to excuse a procedural default, a defendant must demonstrate that some impediment external to the defense prevented him from complying with the procedural rule that has

been violated."<sup>1</sup> Wheeler's trial counsel testified at his evidentiary hearing that he in fact did not discuss Wheeler's right to an appeal with him. This Court has held that counsel is not under obligation to discuss appellate remedies in every instance.<sup>2</sup> "We hold that there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal."<sup>3</sup> This Court has rejected the contention that trial counsel's failure to inform a defendant of the right to appeal constitutes good cause to excuse the filing of an untimely petition pursuant to NRS 34.726(1)(a).<sup>4</sup> But, this Court has found the possibility of good cause to excuse the filing of an untimely petition where "the defendant inquires about an appeal" or "the defendant may benefit from receiving the advice, such as the existence of a direct appeal claim that has a reasonable likelihood of success."<sup>5</sup> Wheeler concedes that he did not ask counsel to file an appeal.

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<sup>1</sup>Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

<sup>2</sup>Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).


<sup>3</sup>Id at 150, 979 P.2d at 223. See also Marrow v. United States, 772 F.2d 525, 527 (9th Cir. 1985).


<sup>4</sup>Harris v. Warden, 114 Nev. 956, 960, 964 P.2d 785, 788 (1998); see also Dickerson v. State, 114 Nev. 1084, 1088, 967 P.2d 1132, 1134 (1998).

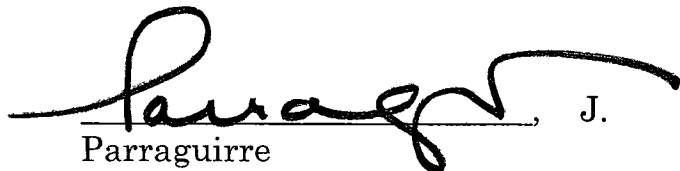
<sup>5</sup>Thomas 115 Nev. at 150, 979 P.2d at 223.

As to a direct appeal issue, Wheeler claims that his sentence was unduly harsh because he was disrespectful to the district judge. The district court found that this claim was not likely to succeed on appeal. We agree.

Based on the foregoing, we conclude that the district court correctly found that the petition was procedurally barred. Accordingly, we ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Parraguirre

cc: Hon. Robert H. Perry, District Judge  
Mary Lou Wilson  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk