

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERESO ARELLANO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45594

**FILED**

NOV 16 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a judgment of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On July 25, 2002, the district court convicted appellant, pursuant to a guilty plea, of high-level trafficking in a controlled substance and opening and/or maintaining a place for the purpose of selling and/or giving away and/or using a controlled substance. The district court sentenced appellant to serve, in the Nevada State Prison, concurrent terms of ten to twenty years for trafficking and twelve to thirty-six months for opening and/or maintaining a place for the purpose of selling and/or giving away and/or using a controlled substance. This court affirmed appellant's judgment of conviction on direct appeal.<sup>1</sup> The remittitur issued on February 25, 2003.

On February 26, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. More

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<sup>1</sup>Arellano v. State, Docket No. 40122 (Order of Affirmance, January 31, 2003).

than a year passed with no action taken on appellant's petition. On April 15, 2005, appellant amended his petition. The State filed a motion to dismiss the petition, arguing it was untimely. On June 16, 2005, appellant filed a response to the State's motion. On June 21, 2005, the district court dismissed the petition as untimely. This appeal followed.

Appellant filed his petition one year and one day after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of good cause for the delay and undue prejudice.<sup>3</sup>

In an attempt to demonstrate good cause for the delay, appellant referenced a March 4, 2003 letter from the deputy clerk of this court to appellant's private counsel, stating the remittitur issued on February 28, 2003. Appellant contended that this letter constituted interference by officials and was an objective factor external to the defense that impeded procedural compliance with NRS chapter 34.<sup>4</sup>

Based upon our review of the record on appeal, we conclude the district court did not err in dismissing appellant's petition. In contrast to Brown v. Allen, in which the state's prison regulations barred inmates from sending appeal papers from the prison, the deputy clerk's erroneous written statement to appellant's counsel of the date the remittitur issued

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<sup>2</sup>NRS 34.726(1).

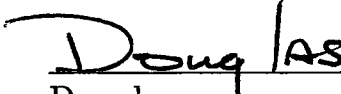
<sup>3</sup>Id.


<sup>4</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); see also Harris v. Warden, 114 Nev. 956, 959-960 n.4, 964 P.2d 785, 787 n.4 (1998) (citations omitted).

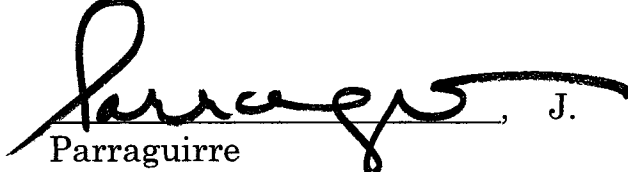
does not constitute interference by officials.<sup>5</sup> The remittitur was available to appellant and his counsel to verify the date of issuance and procedural compliance was therefore possible. As a separate ground for denial of this appeal, appellant made no attempt to show undue prejudice or a fundamental miscarriage of justice would occur if his claims were not considered.<sup>6</sup>

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.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

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

  
\_\_\_\_\_, J.  
Rose

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

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<sup>5</sup>344 U.S. 443, 486 (1953).

<sup>6</sup>NRS 34.726(1); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

<sup>7</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>8</sup>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.

cc: Hon. Jerome Polaha, District Judge  
Tereso Arellano  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk