

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERARDO RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46149

FILED

FEB 16 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  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; John S. McGroarty, Judge.

On February 24, 2004, 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 two consecutive terms of 26 to 120 months in the Nevada State Prison. Appellant did not file a direct appeal.

On July 28, 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 October 11, 2005, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately a year and a half 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

Appellant argued that his delay should be excused because he did not realize that his deadly weapon enhancement was illegal and in violation of Apprendi³ until after he researched the issue. Appellant failed to demonstrate that an impediment external to the defense prevented appellant from complying with the one-year deadline.⁴ Moreover, as a separate and independent ground to deny relief, we conclude that appellant's claim lacked merit. By pleading guilty and admitting to the facts of the charges, appellant waived his right to have a jury determine whether the facts supported the sentence enhancement.⁵ Thus, the

¹See NRS 34.726(1).

²See id.

³Apprendi v. New Jersey, 530 U.S. 466 (2000).

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

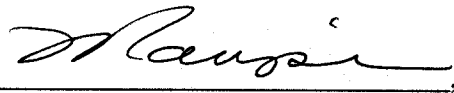
⁵See McCarthy v. United States, 394 U.S. 459, 466 (1969) (stating that a defendant who enters a guilty plea "simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers") (citation omitted); Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum

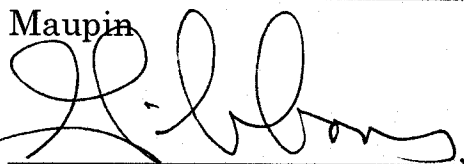
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district court was permitted to impose the deadly weapon enhancement in the instant case.⁶ Thus, we conclude that the district court properly determined that appellant failed to demonstrate good cause and that his petition was procedurally barred.


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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Maupin
 J.

Gibbons

 J.
Hardesty

... continued

that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant" (emphasis in original).

⁶See Blakely, 124 U.S. at 303 (2004).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. John S. McGroarty, District Judge
Gerardo Rodriguez
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk