

IN THE SUPREME COURT OF THE STATE OF NEVADA

ENCARNACION AGUILAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46809

FILED

JUL 10 2006

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 dismissing appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On July 16, 2002, the district court convicted appellant, pursuant to a jury verdict, of one count of trafficking in a controlled substance. The district court sentenced appellant to serve a term of 120 to 300 months in the Nevada State Prison. This court affirmed the judgment of conviction and sentence on direct appeal.¹ The remittitur issued on December 30, 2003.

On April 28, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750, the district court appointed counsel to represent appellant, and counsel filed a supplement to the petition. The State opposed the petition and the supplement. The district court denied

¹Aguilar v. State, Docket No. 40072 (Order of Affirmance, December 5, 2003).

appellant's petition on August 17, 2005, after conducting an evidentiary hearing. This court affirmed the denial of the petition.²

On December 30, 2005, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss 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 February 3, 2006, the district court dismissed appellant's petition.³ This appeal followed.

Appellant filed his petition two years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive and an abuse of the writ because he had previously filed a post-conviction petition for a writ of habeas corpus.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶

Appellant made no attempt to excuse his procedural defects, and the record does not support a finding of good cause and prejudice to excuse the procedural defects. Accordingly, we conclude that the district court did not err in dismissing appellant's petition as procedurally barred.

²Aguilar v. State, Docket No. 45967 (Order of Affirmance, March 24, 2006).

³The district court entered a second order dismissing appellant's petition on March 29, 2006.

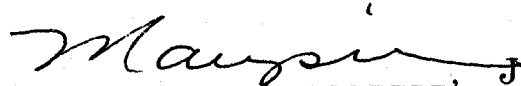
⁴See NRS 34.726(1).

⁵See NRS 34.810(1)(b)(2); NRS 34.810(2).

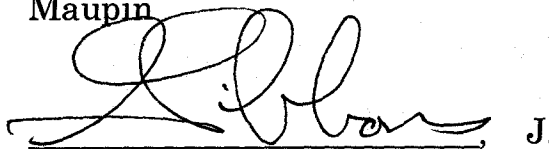
⁶See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

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

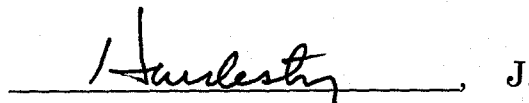
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Lee A. Gates, District Judge
Encarnacion Aguilar
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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