

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUNG HONG,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46811

**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; Nancy M. Saitta, Judge.

On December 4, 2003, the district court convicted appellant, pursuant to a jury verdict, of battery with the use of a deadly weapon resulting in substantial bodily harm and attempted second-degree kidnapping. The district court sentenced appellant to serve two concurrent terms of twenty-four to eighty-four months in the Nevada State Prison. Appellant was also given 187 days' credit for time served.<sup>1</sup> Appellant did not file a direct appeal.

On May 11, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed and moved to dismiss the petition. Appellant filed a reply. 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

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<sup>1</sup>On September 24, 2004, the district court entered an amended judgment of conviction that granted appellant an additional 110 days' credit for time served.

January 24, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately fifteen months after his judgment of conviction. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>3</sup>

Appellant argued that his petition's procedural defects should be excused because he is deaf and mute, and because his attorney did not inform him of his right to appeal.<sup>4</sup>

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause to excuse his procedural defects. The instant petition was not timely filed because it was not filed within one year from his judgment of conviction. Appellant's disabilities are not good cause.<sup>5</sup> This court has held that

an allegation that trial counsel was ineffective in failing to inform a claimant of the right to appeal

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

<sup>3</sup>Id.

<sup>4</sup>Appellant also claimed that his one year time limit should have started when the district court filed its amended judgment of conviction on September 24, 2004. This court has held that the plain language and spirit of NRS 34.726 demand that the one year period for filing a timely petition starts from the date of the original judgment of conviction, or the date this court issues the remittitur in the direct appeal. Sullivan v. State, 120 Nev. 537, 540, 96 P.3d 761, 764 (2004).


<sup>5</sup>See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that organic brain damage and lack of legal assistance are not sufficient good cause).

from the judgment of conviction, or any other allegation that a claimant was deprived of a direct appeal without his or her consent, does not constitute good cause to excuse the untimely filing of a petition pursuant to NRS 34.726.<sup>6</sup>


Therefore, we affirm the order of the district court denying appellant's petition.

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.

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

Maupin

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

Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Nancy M. Saitta, District Judge  
Sung Hong  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>6</sup>Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998); see also Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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