

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARIEL BARRIOS,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, LENARD
VARE,
Respondent.

No. 47340

FILED

OCT 10 2006

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Ariel Barrios' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

Barrios was convicted, pursuant to a guilty plea, of two counts of attempted sexual assault. The district court sentenced Barrios to serve two concurrent prison terms of 48-180 months. This court affirmed the judgment of conviction and sentence on direct appeal.¹ The remittitur issued on February 1, 2005.

On February 2, 2006, Barrios filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and filed a motion to dismiss. Barrios filed an opposition to the State's motion to dismiss. The district court conducted a hearing and on April 12, 2006, entered an order denying Barrios' petition. In its order,

¹See Barrios v. State, Docket No. 43712 (Order of Affirmance, January 7, 2005).

the district court found, among other things, that Barrios failed to demonstrate good cause for the untimeliness of his petition, and therefore, it was time-barred. This timely appeal followed.

Barrios contends that the district court erred by denying his petition. Specifically, Barrios claims that although his petition was untimely filed “due to a clerical error,” the State and district court were not unreasonably burdened.² We disagree with Barrios’ contention.

Application of the procedural default rules to post-conviction petitions for writs of habeas corpus is mandatory.³ As Barrios concedes, his petition was filed more than one year after this court issued its remittitur, and thus, was untimely.⁴ Accordingly, Barrios’ petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Without good cause for the delay and prejudice, this court will excuse the procedural bar only if the petitioner can demonstrate that a failure to consider his claims would result in a fundamental miscarriage of justice.⁶ Barrios has not demonstrated that there was good cause to excuse his petition’s procedural defect, nor has he shown actual prejudice. Moreover,

²See Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984).

³See State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1075 (2005).

⁴See NRS 34.726(1); Gonzales v. State, 118 Nev. 590, 593, 53 P.3d 901, 902 (2002).

⁵See NRS 34.726(1).

⁶See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

Barrios has failed to meet his burden by pleading specific facts demonstrating that a failure to consider his petition would result in a fundamental miscarriage of justice. Therefore, we conclude that the district court did not err in denying his petition.

Having considered Barrios' contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.⁷

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge
Patti & Sgro, P.C.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷On July 18, 2006, this court entered an order denying Anthony P. Sgro's motion to withdraw as Barrios' counsel. Among other things, we informed counsel that he may renew his motion after fulfilling the obligations placed on him by NRAP 3C(b). We note that as of this date, counsel has not renewed his motion.