

IN THE SUPREME COURT OF THE STATE OF NEVADA

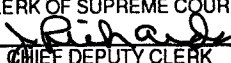
EVODIO SALDIVAR-RAMOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47413

FILED

NOV 15 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 dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On July 15, 2003, the district court convicted appellant, pursuant to a jury verdict, of twenty counts of sexual assault on a minor under the age of sixteen. The district court sentenced appellant to serve a total of two consecutive terms of five to twenty years in the Nevada State Prison. This court affirmed the judgment of conviction on direct appeal.¹ The remittitur issued on March 9, 2004.

On February 15, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Saldivar-Ramos v. State, Docket No. 41776 (Order Affirming in Part and Remanding in Part to Correct Judgment of Conviction, February 12, 2004). This court directed the district court to correct a clerical error in the judgment of conviction—the judgment of conviction was entered pursuant to a jury verdict and not a guilty plea. It does not appear that the district court has yet corrected the judgment of conviction. We direct the district court to correct the judgment of conviction to reflect that appellant was convicted pursuant to a jury verdict.

State filed a motion to dismiss the petition, and appellant filed a response. 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 May 10, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately two years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³

In an attempt to demonstrate cause for the delay, appellant argued that a language barrier prevented him from filing a timely petition. Specifically, appellant claimed that he did not read, write, speak or understand English and that the facilities in which he was housed did not provide him with interpreters, legal materials in his native tongue, or persons trained in the law to assist him. Appellant claimed that his language disability qualified him as a person with a disability for purposes of requiring the appointment of an interpreter pursuant to NRS 50.051. Appellant further claimed that the courts could not apply any procedural default rules because they are inconsistently applied. Finally, appellant claimed that his petition was timely filed because the district court had not entered a judgment of conviction pursuant to court's directions on appeal, and thus, no valid judgment of conviction existed in this case to trigger the one-year time limit for filing a petition.

²See NRS 34.726(1).

³See *id.*

Based upon our review of the record on appeal, we conclude that the district court did not abuse its discretion in determining that appellant's petition was procedurally barred. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects in the instant case.⁴ We note that the record does not support appellant's claim that he did not understand any English, and a language barrier does not qualify for the appointment of counsel under NRS 50.051.⁵ Further, under the facts in this case, appellant failed to demonstrate that official interference prevented him from filing a timely petition.⁶ The alleged inconsistent application of procedural bars is not sufficient reason for this court to ignore the mandatory procedural requirements set forth in NRS chapter 34. The petition was not timely as entry of an amended judgment of conviction will not restart the clock for filing a timely habeas corpus petition in the instant case.⁷ Finally, even assuming that the alleged language barrier would constitute good cause, appellant failed to demonstrate prejudice to excuse his procedural defects; appellant failed to raise any claim of error that worked to his actual and

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

⁵See NRS 50.050(1)(b).

⁶See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988); see also Lewis v. Casey, 518 U.S. 343, 350-60 (1996).

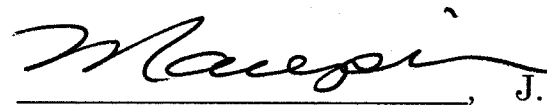
⁷See Sullivan v. State, 120 Nev. 537, 96 P.3d 761 (2004).

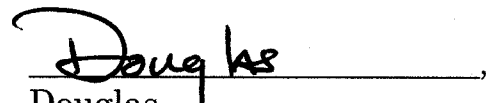
substantial disadvantage.⁸ Therefore, we affirm the order of the district court dismissing appellant's petition as procedurally barred.

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Michael A. Cherry, District Judge
Evodio Saldivar-Ramos
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Hogan v. Warden, 109 Nev. 952, 860 P.2d 710 (1993).

⁹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).