

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL VALENZUELA, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47617

FILED

SEP 07 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *A. Alvarado*
DEPUTY CLERK

This is an appeal from a district court order dismissing appellant's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Churchill County; David A. Huff, Judge.

On November 18, 1994, the district court convicted appellant Samuel Valenzuela, III, pursuant to a jury verdict, of sexual assault of a child under the age of 14, causing substantial bodily harm. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after 10 years. On direct appeal, this court affirmed the judgment of conviction and sentence. The remittitur issued on October 17, 2000.

In April 2002, Valenzuela wrote a letter to the district court requesting assistance, and the district court appointed counsel to assist with a post-conviction petition on May 7, 2002. Counsel filed a motion for leave to file an untimely petition for a writ of habeas corpus. The district court denied the motion on April 1, 2003. On May 1, 2003, Valenzuela

filed a notice of appeal in the district court, but that notice of appeal was never transmitted to this court.¹

On October 11, 2005, Valenzuela filed a proper person petition for a writ of habeas corpus. The district court appointed new counsel to assist Valenzuela. The State moved to dismiss the petition, specifically pleading laches.² On September 5, 2006, the district court entered a final order dismissing Valenzuela's petition.

Valenzuela filed his petition approximately 5 years after this court issued the remittitur from his direct appeal. Thus, Valenzuela's petition was untimely filed.³ Valenzuela's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁵

On appeal, Valenzuela contends that there is good cause because of this court's delay in deciding his direct appeal, and the district court's failure to transmit his notice of appeal from the district court order denying his motion for leave to file an untimely habeas petition. He further argues that after his conviction, he was in "lockdown" and was not

¹The district court should have transmitted the notice of appeal to this court. Nonetheless, we conclude that the district court did not err by denying the motion to file an untimely petition, and we affirm the order of the district court.

²See NRS 34.800.

³See NRS 34.726(1).

⁴See id.

⁵See NRS 34.800(2).

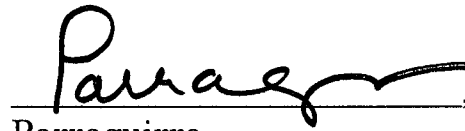
able to prepare a petition. Finally, Valenzuela argues that this court should consider the merits of his claims in order to provide a “modicum of justice.”

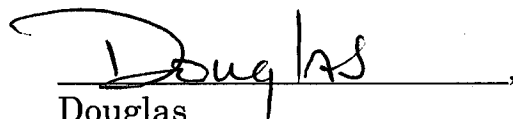
We conclude the district court did not err in finding the petition untimely because Valenzuela failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.⁶ Moreover, upon review of the claims presented in the petition we conclude that failure to consider the petition would not result in a fundamental miscarriage of justice.⁷

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Hardesty, J.


Parraguirre, J.


Douglas, J.

⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁷See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996) (stating that a petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice).

cc: Hon. David A. Huff, District Judge
Martin G. Crowley
Attorney General Catherine Cortez Masto/Carson City
Churchill County District Attorney
Churchill County Clerk