

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS JOSEPH MOLINA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49777

FILED

FEB 13 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On June 24, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of home invasion. The district court sentenced appellant to serve a term of 48 to 18 months in the Nevada State Prison. The district court suspended appellant's sentence and placed appellant on probation for an indeterminate period not to exceed 3 years. Appellant filed a direct appeal. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction. The remittitur issued on November 16, 2005.

On March 9, 2006, the district court revoked appellant's probation, executed the original sentence of a term of 48 to 18 months in the Nevada State Prison, and amended the judgment of conviction to include 210 days of credit.

On March 29, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed 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 July 16, 2007, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition nearly two years after entry of the judgment of conviction.¹ 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 Appellant failed to allege or demonstrate good cause.⁴ Therefore, the district court did not err in denying the petition as procedurally time barred.

¹The remittitur from appellant's direct appeal may not be used to start the one-year period for filing a post-conviction petition for a writ of habeas corpus because appellant's appeal was untimely and did not vest jurisdiction in this court. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).


²See NRS 34.726(1).

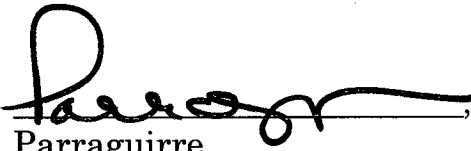
³See id.

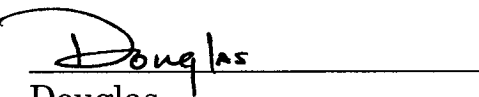
⁴Because appellant did not challenge the order revoking probation, the order revoking probation does not provide good cause for the late filing of his petition. See Sullivan v. State, 120 Nev. 537, 96 P.3d 761 (2004).

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Michelle Leavitt, District Judge
Dennis Joseph Molina
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).