

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES DAVID OFELDT,  
Appellant,  
vs.  
WARDEN, ELY STATE PRISON, E.K.  
MCDANIEL,  
Respondent.

No. 50128

**FILED**

APR 10 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On July 1, 2004, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon, one count of burglary while gaining or in possession of a deadly weapon, and one count of conspiracy to commit robbery with the use of a deadly weapon. The district court sentenced appellant to serve a total of two consecutive terms of 36 to 156 months in the Nevada State Prison. This court affirmed appellant's judgment of conviction on direct appeal.<sup>1</sup> The remittitur issued on April 18, 2006.

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<sup>1</sup>Ofeldt v. State, Docket No. 43718 (Order of Affirmance, March 24, 2006).

On May 10, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 August 2, 2007, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than one year after the issuance of remittitur in the direct appeal. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>3</sup>

In an attempt to demonstrate cause for the delay, appellant argued that he could not afford postage. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate good cause as he failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.<sup>4</sup> Therefore, we affirm the order of the district court dismissing the petition as procedurally time barred.

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<sup>2</sup>See NRS 34.726(1); see also Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002) (holding that pursuant to NRS 34.726 the one-year deadline is measured from this court's issuance of the remittitur on direct appeal rather than being measured from this court's filing of the remittitur after receipt from the district court).

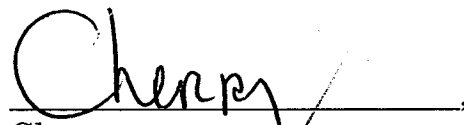
<sup>3</sup>See NRS 34.726(1).

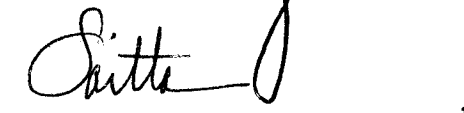
<sup>4</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

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

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

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

cc: Hon. Steven P. Elliott, District Judge  
James David Ofeldt  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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

<sup>6</sup>We deny appellant's motion for the appointment of counsel in this appeal.