

IN THE SUPREME COURT OF THE STATE OF NEVADA

APOLINAR RIVAS-HERRERA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50199

FILED

FEB 29 2008

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

ORDER OF AFFIRMANCE

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

On April 16, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of lewdness with a child under the age of 14. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after 10 years. This court affirmed appellant's judgment of conviction and sentence.¹ The remittitur issued on July 1, 2003.

¹Rivas-Herrera v. State, Docket No. 39649 (Order of Affirmance, June 4, 2003).

On July 6, 2004, 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 34.770, the district court declined to conduct an evidentiary hearing. On August 24, 2007, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.² Notably, this court has refused to apply the prison mailbox rule to the filing of habeas corpus petitions.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

Appellant failed to either acknowledge or offer any cause for his delay in filing the instant petition. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition as procedurally barred.

²See NRS 34.726(1).

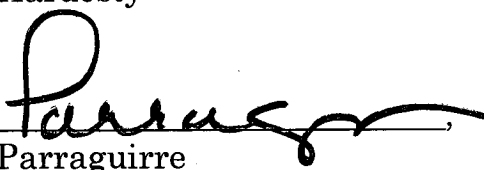
³Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002) (refusing to accept as timely a petition filed one year and two days after this court issued the remittitur).


⁴See id.

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. Steven R. Kosach, District Judge
Apolinar Rivas-Herrera
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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