

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERTO ALVIRA, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50245

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; Jerome Polaha, Judge.

On February 2, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of forgery. The district court sentenced appellant to serve a term of 19 to 48 months in the Nevada State Prison. No direct appeal was taken.

On June 20, 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 15, 2007, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant claimed: (1) his trial counsel was ineffective for failing to investigate and perform legal research; (2) his trial counsel, the district court judge, and the district attorney failed to inform

him of his right to appeal; (3) the evidence used to convict appellant was the result of an unconstitutional search and seizure; and (4) his trial counsel had a conflict of interest that materially compromised the defense.

Appellant filed his petition approximately sixteen months after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.²

In an attempt to demonstrate cause for the delay, appellant argued that he only recently learned that his trial counsel misadvised him that he did not have a right to appeal. Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing the petition as procedurally time-barred and without good cause. The claims raised in the petition were reasonably available to appellant within the one-year period for filing a timely post-conviction petition for a writ of habeas corpus.³ Notably, appellant failed to provide any specific argument as to when he learned of the alleged mistake in advice or why he could not have learned of the mistake in advice earlier. Therefore, we affirm the order of the district court dismissing the petition.

¹See NRS 34.726(1).


²See id.

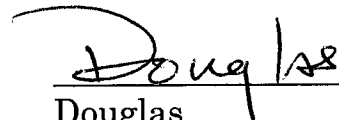
³See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jerome Polaha, District Judge
Roberto Alvira III
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).