

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICHOLAS JOHN EDDARDS A/K/A
NICHOLAS JON EDDARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50353

FILED

APR 25 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 denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On February 16, 2005, the district court suspended the proceedings against appellant and placed him on probation pursuant to NRS 453.3363. On November 9, 2005, the district court convicted appellant, pursuant to a guilty plea, of possession of a controlled substance. The district court sentenced appellant to serve a term of 12 to 30 months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a term not to exceed three years. On July 25, 2006, the district court entered an order revoking appellant's probation. Appellant did not file a direct appeal.

On July 2, 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 September 25, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his counsel was ineffective for: (1) improperly advising appellant about the possible sentences he could receive prior to his guilty plea, (2) coercing appellant to plead guilty, and (3) failing to advise appellant about his right to an appeal from his judgment of conviction.

Appellant filed his petition more than one year 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 Appellant did not attempt to demonstrate good cause to excuse his delay, and thus, we conclude that the district court did not err in denying appellant's petition.³

¹See NRS 34.726(1).


²See *id.* Because appellant's claims did not challenge the order revoking probation, the order revoking probation does not provide good cause for the late filing of the petition. *Sullivan v. State*, 120 Nev. 537, 541-42, 96 P.3d 761, 764 (2004).

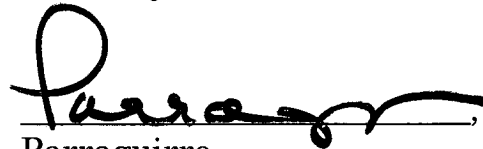
³See *Hathaway v. State*, 119 Nev. 248, 71 P.3d 503 (2003); *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994). To the extent that appellant's appeal deprivation claim may be construed as an attempt to demonstrate good cause to excuse the delay in filing his petition, appellant did not assert that his counsel's failure to file an appeal was unknown to him within the statutory period. See *Hathaway*, 119 Nev. at 254, 71 P.3d at 507 (holding that good cause was shown where petitioner "requested that his attorney file an appeal, his attorney had affirmatively indicated that he would file an appeal, he believed that his attorney had filed an appeal on his behalf, and he filed his habeas corpus petition within a reasonable time after learning that his attorney had not filed an appeal."); *Harris v. Warden*, 114 Nev. 956, 959, 964 P.2d 785, 792 (1998) (holding that "the

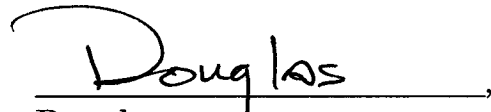
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Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Sally L. Loehrer, District Judge
Nicholas John Eddards
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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mere allegation that a claimant was deprived of a direct appeal without his or her consent does not alone constitute good cause and prejudice”).

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