

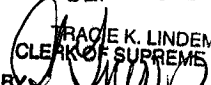
IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO TORRES LEDEZMA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50754

FILED

SEP 09 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing appellant Antonio Torres Ledezma's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Lyon County; Robert E. Estes, Judge.

On August 4, 2005, Ledezma was convicted, pursuant to a guilty plea, of one count each of second-degree kidnapping with the use of a deadly weapon and assault with a deadly weapon. The district court sentenced Ledezma to serve two consecutive prison terms of 72-180 months for the kidnapping and a consecutive prison term of 28-72 months for the assault. Ledezma did not pursue a direct appeal from the judgment of conviction and sentence.

On July 26, 2007, Ledezma filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss Ledezma's petition based on its untimeliness.¹ The district court appointed counsel to represent Ledezma

¹See NRS 34.726(1) ("Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be
continued on next page . . .

and counsel submitted an opposition to the State's motion to dismiss. On November 20, 2007, the district court entered an order dismissing Ledezma's petition. This timely appeal followed.

Ledezma filed his habeas petition nearly two years after the filing of his judgment of conviction. Thus, Ledezma's petition was untimely filed and procedurally barred absent a demonstration of good cause for the delay and prejudice.² "[G]ood cause necessary to overcome a procedural bar must be some impediment external to the defense."³ Generally, a lower court's determination regarding the existence of good cause will not be disturbed absent an abuse of discretion.⁴ Without good cause for the delay, this court will excuse the procedural bar only if the petitioner can demonstrate that a failure to consider his claims would result in a fundamental miscarriage of justice.⁵

On appeal, Ledezma claims that his "lack of understanding of the proceedings due to language difficulties violated his right to due process." Ledezma also claims that he received ineffective assistance of

... continued

filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur.").

²See *id.*

³*Harris v. Warden*, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998); see also *Murray v. Carrier*, 477 U.S. 478, 488 (1986).

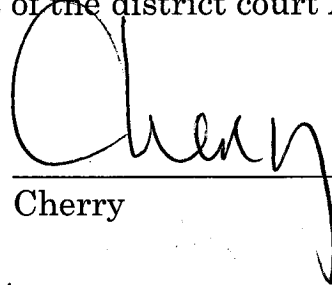
⁴See *Colley v. State*, 105 Nev. 235, 773 P.2d 1229 (1989).

⁵See *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); cf. NRS 34.800(1).

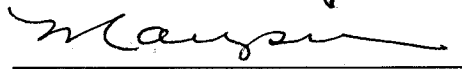
counsel due to his “inability to speak and understand English well.” Ledezma, however, fails to provide any argument indicating that his difficulties with the English language or counsel’s alleged ineffectiveness resulted in the filing of an untimely habeas petition. The district court found that Ledezma’s petition was untimely and failed “to state facts that constitute a basis for a finding of good cause to overcome the filing delay.” The district court also found that Ledezma failed to demonstrate that he suffered a manifest injustice. We agree and conclude that the district court did not err by dismissing Ledezma’s petition.

Having considered Ledezma’s contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.

Cherry


_____, J.

Maupin


_____, J.

Saitta

cc: Hon. Robert E. Estes, District Judge
Fry & Berning, LLC
Attorney General Catherine Cortez Masto/Carson City
Lyon County District Attorney
Lyon County Clerk