

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDALL WALTER NOTTER,

No. 34579

Appellant,

vs.

WARDEN, LOVELOCK CORRECTIONAL
CENTER, JACKIE CRAWFORD,

Respondent.

FILED

APR 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. Bark*
CHIEF 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.

On September 27, 1996, the district court convicted appellant, pursuant to a jury verdict, of first degree arson. The district court sentenced appellant to serve a term of 48 to 120 months in the Nevada State Prison. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction. The remittitur issued on April 1, 1997.¹

On January 20, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and appellant filed a reply. 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 July 7, 1999, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than two years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally

¹See Notter v. State, Docket No. 29507 (Order Dismissing Appeal, March 12, 1997).

²See NRS 34.726(1); see also Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (holding that the one-year period for filing a timely petition "begins to run from the issuance of the remittitur from a timely direct appeal to this court from the judgment of conviction or from the entry of the judgment of conviction if no direct appeal is taken").

barred absent a demonstration of cause for the delay and prejudice.³

In an attempt to demonstrate cause for the delay, appellant argued (1) that his counsel failed to file a timely notice of appeal; (2) he relied on untrained inmate law clerks who incorrectly informed him of the procedural time bar; and (3) because he submitted his writ to the Federal court, he had no knowledge or access to knowledge of any laws stating the procedural bar of NRS 34.726. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant failed to demonstrate adequate cause to excuse his delay.⁴

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.

Young, J.
Young
Leavitt, J.
Leavitt
Becker, J.
Becker

cc: Hon. James W. Hardesty, District Judge
Attorney General
Washoe County District Attorney
Randall Walter Notter
Washoe County Clerk

³See NRS 34.726(1).

⁴See *Harris v. Warden*, 114 Nev. 956, 964 P.2d 785 (1998); *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994); see also *Phelps v. Director, Prisons*, 104 Nev. 656, 764 P.2d 1303 (1988).

⁵See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).