

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR MANUEL CERVANTES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50877

**FILED**

JUL 11 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 a "motion to set aside conviction." Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On May 12, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of second-degree murder with the use of a deadly weapon, one count of attempted murder with the use of a deadly weapon, one count of discharging a firearm out of a motor vehicle and one count of discharging a firearm at or into a vehicle. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole for the murder count. Determinate terms for the remaining counts were imposed to run concurrently with the life sentences. No direct appeal was taken.

On November 1, 2007, appellant filed a proper person "motion to set aside conviction" in the district court. The State opposed the motion. On December 26, 2007, the district court denied appellant's motion. This appeal followed.

In his motion, appellant claimed that his trial counsel was ineffective for failing to inform him of his appeal rights or to ensure that appellant received appointed counsel who would perfect an appeal.

Preliminarily, we note that appellant's appeal deprivation claim challenged the validity of his judgment of conviction and sentence. A claim challenging the validity of the judgment of conviction and sentence should be raised in a post-conviction petition for a writ of habeas corpus filed in compliance with the procedural rules set forth in NRS chapter 34.<sup>1</sup> Although appellant's motion was not in the proper form, we conclude that in the interests of judicial economy his motion is properly construed to be a post-conviction petition for a writ of habeas corpus.

Appellant filed his motion more than four years after entry of the judgment of conviction. Thus, appellant's motion was untimely filed.<sup>2</sup> Appellant's motion was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>3</sup>

In an attempt to demonstrate cause for the delay, appellant argued that he had a limited knowledge of English. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate cause for the delay in the instant case. Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.<sup>4</sup> Appellant failed to demonstrate that any alleged language barrier prevented him from raising his claim in a timely

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<sup>1</sup>NRS 34.724(2)(b) (stating that a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them").

<sup>2</sup>NRS 34.726(1).

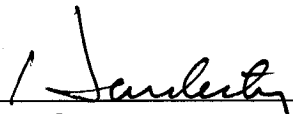
<sup>3</sup>Id.


<sup>4</sup>Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

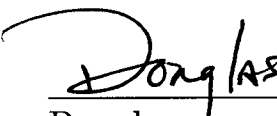
petition.<sup>5</sup> Appellant failed to provide any argument that the prison did not provide adequate resources for access to the courts.<sup>6</sup> Therefore, we conclude that the district court did not err in determining that appellant's petition was procedurally time barred.

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.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>5</sup>Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

<sup>6</sup>See id. at 252, 71 P.3d at 506 (“An impediment eternal to the defense may be demonstrated by a showing . . . that ‘some interference by prison officials,’ made compliance impracticable.”) (quoting Murray v. Carrier, 477 U.S. 478, 488 (1986)).

<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Victor Manuel Cervantes  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk