

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MICHAEL STEINHAUER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51129

FILED

OCT 21 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 post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On April 16, 1996, appellant David Steinhauer was convicted, pursuant to a jury verdict, of battery with the intent to commit sexual assault. The district court sentenced him to serve a term of ten years in the Nevada State Prison. This court affirmed appellant's judgment of conviction and sentence on appeal.¹ The remittitur issued on June 16, 1998.

On November 17, 1998, appellant, with the assistance of counsel, filed a petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court granted partial relief and appellant was resentenced on December 9, 1999, to serve a term six and one-half years in the Nevada State Prison with credit for time served.

¹Steinhauer v. State, Docket No. 28723 (Order Dismissing Appeal, May 28, 1998).

On November 20, 2007, appellant filed a proper person document labeled “supplement to 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 for this supplement or to conduct an evidentiary hearing. On February 5, 2008, the district court denied appellant’s petition. This appeal followed.

Appellant indicated that he had completed serving the sentence in 2000. Thus, when appellant filed the instant petition challenging his conviction, appellant was not in custody pursuant to the 1999 judgment of conviction. Because appellant was not in custody or otherwise restrained of his liberty as a result of this conviction at the time he filed his petition, we conclude that the district court did not err in denying his petition.² Moreover, as a separate and independent ground for denying relief, appellant’s petition was procedurally time barred. Appellant failed to file his petition within one year after the entry of the judgment of conviction and appellant failed to demonstrate good cause for the delay.³

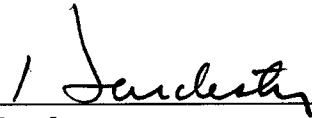
²See Jackson v. State, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999); see also Nev. Const. art. 6, § 6(1); NRS 34.724(1).

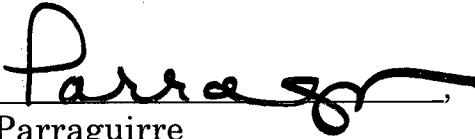
³See NRS 34.726(1); Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (stating that good cause for the delay must be an impediment external to the defense); see generally Phelps v. Director, Prisons, 104 Nev. 656, 660 764 P.2d 1303, 1306 (1988) (holding that petitioner’s claim of organic brain damage, borderline mental retardation and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post-conviction petition).

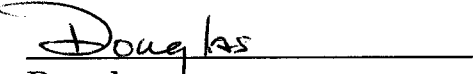
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Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Steven R. Kosach, District Judge
David Michael Steinhauer
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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We note that appellant's petition was filed untimely from both the remittitur for his direct appeal, which was issued on June 16, 1998, and from the second judgment of conviction, filed on December 9, 1999. See also Sullivan v State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004) (stating "untimely post-conviction claims that arise out of the proceedings involving the initial conviction . . . and that could have been raised before the judgment of conviction was amended are procedurally barred").

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