

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL KIMBALL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51521

**FILED**

DEC 17 2008

TRACIA K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
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; Valorie Vega, Judge.

On February 10, 2006, the district court convicted appellant, pursuant to a guilty plea, of coercion and child abuse. The district court sentenced appellant to serve two consecutive terms of one to three years in the Nevada State Prison. No direct appeal was taken.

On January 23, 2008, 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 April 21, 2008, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition almost two years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.<sup>1</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>2</sup>

In his petition, appellant did not state any specific cause for the delay but stated simply "see motions and petitions." Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate good cause or prejudice.<sup>3</sup> Appellant also made a claim of actual innocence.<sup>4</sup> However, appellant presented no evidence in support of this claim.<sup>5</sup> Therefore, the district court did not err in finding that appellant's petition was procedurally barred.

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

<sup>2</sup>See *id.*


<sup>3</sup>In his petition, appellant raised claims that were presented in prior motions and petitions. Appellant's good cause argument appears to be a reference to documents filed in these prior proceedings. In particular, on April 10, 2007, appellant filed proper person motions to transport, to show cause, for an evidentiary hearing, to appoint counsel for withdrawal of guilty plea and sentence modification, and a petition for a writ of mandamus. The district court denied the motions and the petition, and this court dismissed appellant's appeal. *Kimball v. State*, Docket No. 49583 (Order Dismissing Appeal, June 26, 2007). We note that none of the arguments in these prior filings demonstrated good cause or prejudice.

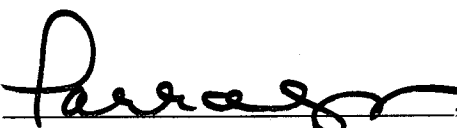
<sup>4</sup>See *Mitchell v. State*, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006).

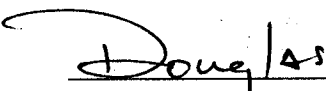
<sup>5</sup>See *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

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>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

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

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

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

cc: Hon. Valorie Vega, District Judge  
Daniel Kimball  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>6</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.