

IN THE SUPREME COURT OF THE STATE OF NEVADA

TYRONE D. MCKENZIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52249

TYRONE D. MCKENZIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52353

FILED

JUN 05 2009

TRACIE L. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David B. Barker and Jackie Glass, Judges. We elect to consolidate these appeals for disposition. NRAP 3(b).

On May 16, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to commit robbery with use of a deadly weapon and two counts of robbery with the use of a deadly weapon in district court case number C220136. The district court sentenced appellant to serve a term of 12 to 72 months in the Nevada State Prison for the conspiracy count, two consecutive terms of 30 to 120 months for one of the robbery counts, and two consecutive terms of 48 to 180 months for the second robbery count. The district court imposed the

terms for the robbery counts to run consecutively to one another and concurrently to the conspiracy count. The district court further provided appellant with 98 days of credit for time served. No direct appeal was taken.

On June 28, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary while in possession of a firearm and one count of robbery with the use of a deadly weapon in district court case number C220036. The district court sentenced appellant to serve a term of 12 to 120 months in the Nevada State Prison and two consecutive terms of 72 to 180 months, the latter to be served consecutively to the former. The district court further ordered the terms for this case to run concurrently to district court case number C220136. No direct appeal was taken.

On May 12, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court designating both district court cases. 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 September 30, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that the 2007 amendment to NRS 193.165, reducing the term of a deadly weapon enhancement from an equal and consecutive term to a term of not less than 1 year or more than 20 years, should be retroactively applied to his sentences. See 2007 Nev. Stat., ch. 525, § 13, at 3188-89.


Appellant filed his petition approximately two years after entry of the judgments of conviction. Thus, appellant's petition was

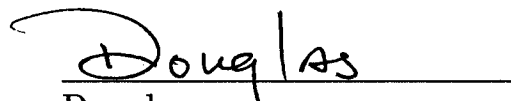
untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See id.

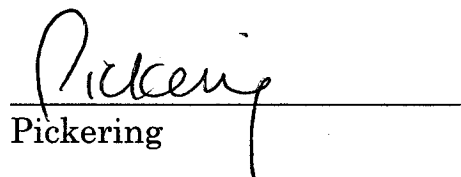
Appellant did not attempt to explain his delay, and thus, he failed to demonstrate good cause to file an untimely petition. To the extent that appellant claimed that he had good cause because of the 2007 amendments to NRS 193.165, the 2007 amendments did not provide good cause in the instant case. The 2007 amendments to NRS 193.165 do not apply retroactively, but rather apply only to those offenses committed after July 1, 2007. See State v. Dist. Ct. (Pullin), 124 Nev. ___, 188 P.3d 1079 (2008). Therefore, we conclude that the district court did not err in determining that the petition was procedurally barred and without good cause.

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

ORDER the judgments of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. David B. Barker, District Judge
Hon. Jackie Glass, District Judge
Tyrone D. McKenzie
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk