

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER JOSEPH RAIMONDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52360

FILED

FEB 03 2010

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Thorp*
DEPUTY CLERK

This is an appeal from an order of the district court denying appellant Christopher Raimonda's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

Raimonda argues that the district court erred in denying his claims that his trial counsel was ineffective for failing to request a competency hearing prior to the entry of his guilty plea and failing to perfect a direct appeal from his judgment of conviction. We disagree.

Raimonda filed the instant petition on June 27, 2006, over four years after the judgment of conviction was filed.¹ Thus, the petition was untimely and procedurally barred absent a demonstration of good cause for the delay and prejudice. See NRS 34.726(1).

Raimonda does not expressly argue that the district court erred in determining that no good cause existed to excuse the delay in filing his petition. To the extent that he suggests that his alleged

¹No direct appeal was taken.

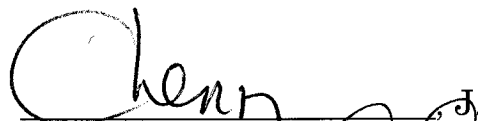
incompetence is good cause to excuse the delay, he failed to overcome the procedural default as he filed a proper person motion to withdraw his guilty plea two years prior to filing the instant petition, demonstrating his capacity to pursue legal remedies. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (providing that claim of good cause “itself must not be procedurally defaulted”).

As to Raimonda’s claim that the district court erred by denying his appeal-deprivation claim, he failed to overcome the procedural default as he acknowledged in his motion to withdraw his guilty plea, which was filed in 2004, that no direct appeal was filed but did not file the instant petition until two years later. See id.

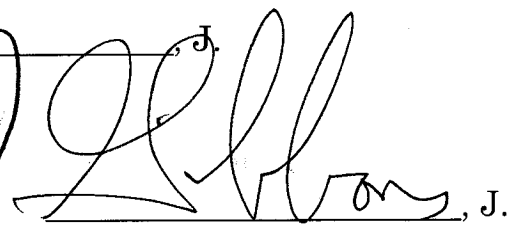
Raimonda next argues that the district court erred in denying his claim that counsel was ineffective for failing to file a notice of appeal from the district court’s denial of his post-conviction motion to withdraw his guilty plea. However, it appears that while the district court orally denied the motion, no written order was entered. Thus, the period for filing a timely notice of appeal concerning the district court’s denial of Raimonda’s motion to withdraw his guilty plea has not yet elapsed. See NRAP 4(b)(1).

Having considered Raimonda’s contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


Cherry


Saitta


Gibbons

cc: Eighth Judicial District Court Dept. 8, District Judge
Christopher R. Oram
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk