

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RAY HUGHES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52433

FILED

JUN 26 2009

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

On April 5, 2006, the district court convicted appellant, pursuant to a guilty plea, of burglary (count 1), forgery (count 2), and theft (count 3). The district court sentenced appellant to serve in the Nevada State Prison terms totaling 32 to 108 months. Appellant filed a direct appeal, but withdrew it voluntarily. Hughes v. State, Docket No. 47283 (Order Dismissing Appeal, July 13, 2006). This court noted that, because no remittitur issued from the withdrawal of his direct appeal, see NRAP 42(b), the one-year period for filing a timely post-conviction petition was to commence from the date of that order.

On May 5, 2008, appellant filed a motion to modify sentence. The State opposed the motion. On July 11, 2008, the district court denied the motion. Appellant did not appeal the denial of the motion.

On June 13, 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 August 7, 2008, the district court dismissed appellant's petition as procedurally barred. This appeal followed.

In his petition, appellant claimed as follows: (1) he was denied the right to attend his sentencing hearing, (2) his due process rights were violated, (3) his convictions violated double jeopardy principles, (4) the district court considered improper evidence at the sentencing hearing, (5) his sentence should be modified because he aided law enforcement in other investigations, (6) he suffered from prosecutorial misconduct, (7) the district court was biased against him, (8) his sentence constitutes cruel and unusual punishment, (9) his trial counsel was ineffective for failing to investigate mitigating evidence, (10) his trial counsel was ineffective for advising him to plead guilty to three felonies, (11) his trial counsel was ineffective for failing to present evidence that he aided law enforcement, and (12) he was held in isolated protective custody.

Appellant filed his petition almost two years after this court issued the order dismissing his direct appeal. Thus, appellant's petition was untimely filed. See NRS 34.726(1); see also Gonzales v. State, 118 Nev. 590, 596 n.18, 53 P.3d 901, 904 n.18 (2002) (recognizing that where a timely direct appeal is voluntarily dismissed, the one-year time period for filing a post-conviction petition for a writ of habeas corpus commences from the date of entry of this court's order granting the motion to voluntarily dismiss the appeal). Appellant's petition was procedurally

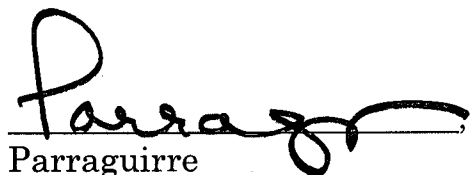
barred absent a demonstration of good cause and prejudice. See NRS 34.726(1).

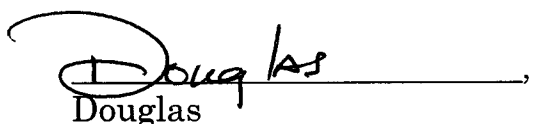
To excuse his procedural defects, appellant claimed that his legal materials were destroyed by a Clark County Corrections officer and that his trial counsel refused to send him the transcripts of the district court proceedings. Thus, he was unable to raise his claims in a timely manner.

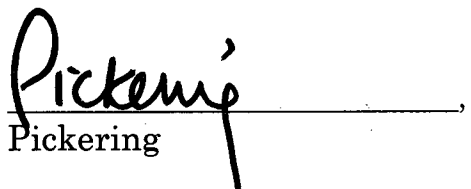
Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition as procedurally defective. Appellant failed to demonstrate that an impediment external to the defense excused the procedural defects. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). Appellant was transferred to the custody of the Department of Corrections shortly after his sentencing; thus appellant failed to demonstrate that his loss of legal material in the Clark County Detention Center caused the delay. Appellant did not explain why he could not file a petition within the one-year time period and raise the issue of the alleged destruction of the paperwork. In addition, trial counsel's failure to send him transcripts would not excuse his procedural defect. See Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995). To the extent that appellant challenged the conditions of confinement, a post-conviction petition for a writ of habeas corpus is not the proper vehicle to raise such challenges. Bowen v. Warden, 100 Nev. 489, 686 P.2d 250 (1984). Therefore, the district court did not err in dismissing the petition as procedurally 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. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. James M. Bixler, District Judge
Michael Ray Hughes
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹We 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.