

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUVENTINO HERNANDEZ-MARTINEZ,

No. 34835

Appellant,

vs.

WARDEN, LOVELOCK CORRECTIONAL
CENTER, JACKIE CRAWFORD,

Respondent.

FILED

JUL 09 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus.

On September 14, 1995, the district court convicted appellant, pursuant to a guilty plea, of trafficking in a controlled substance. The district court sentenced appellant to serve a term of 10 years in the Nevada State Prison. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹

On December 29, 1995, appellant filed a proper person post-conviction 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 or to conduct an evidentiary hearing. On February 2, 1996, the district court denied appellant's petition. This court dismissed appellant's appeal.²

On March 12, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant also filed a supplement to his

¹Hernandez-Martinez v. State, Docket No. 33232 (Order Dismissing Appeal, November 30, 1998).

²Hernandez-Martinez v. State, Docket No. 28345 (Order Dismissing Appeal, September 4, 1998).

petition. 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 2, 1999, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately three and one-half years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

In an attempt to excuse the procedural defects, appellant asserted that his trial counsel failed to inform him of his right to appeal the judgment of conviction and therefore he was deprived of a direct appeal without his consent. This court has held that "an allegation that trial counsel was ineffective in failing to inform a claimant of the right to appeal from the judgment of conviction, or any other allegation that a claimant was deprived of a direct appeal without his or her consent, does not constitute good cause to excuse the untimely filing of a petition pursuant to NRS 34.726."⁶ Appellant must demonstrate some other excuse for the delay in filing his petition and for the successive nature of his petition. Because appellant failed to otherwise demonstrate adequate cause, some impediment external to the

³See NRS 34.726(1).

⁴See NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(3).

⁶Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

defense, the district court properly denied appellant's petition.⁷

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young J.
Young
Leavitt J.
Leavitt
Becker J.
Becker

cc: Hon. Jerry V. Sullivan, District Judge
Attorney General
Humboldt County District Attorney
Juventino Hernandez-Martinez
Humboldt County Clerk

⁷See id.; Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997); Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996); Passanisi v. Director, Dep't Prisons, 105 Nev. 63, 769 P.2d 72 (1989); see also Murray v. Carrier, 477 U.S. 478 (1986).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).