

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE ESTRADA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53503

FILED

OCT 27 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On August 16, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of placing graffiti on or otherwise defacing property with the intent to promote, further or assist a criminal gang and one count of battery with a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 12 to 30 months in the Nevada State Prison for the graffiti count and a concurrent term of 24 to 60 months for the battery count. No direct appeal was taken.

On December 1, 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 March 2, 2009, the district court denied appellant's petition. This appeal followed.

Appellant appeared to challenge the validity of his judgment of conviction and the computation of time served.

To the extent that appellant's petition challenged the validity of the judgment of conviction, appellant's petition was untimely filed as it was filed more than two years after entry of the judgment of conviction. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See id.

In an attempt to demonstrate cause for the delay, appellant argued that his trial counsel failed to advise him of the right to appeal and ascertain his wishes regarding an appeal.

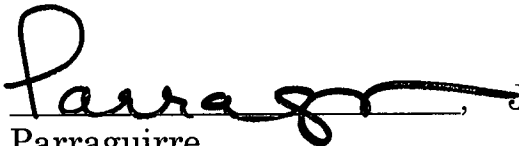
Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition as procedurally barred. Appellant's claims challenging the validity of the judgment of conviction, including the deprivation of the right to appeal due to the ineffective assistance of counsel, were reasonably available to be raised in a timely petition. Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

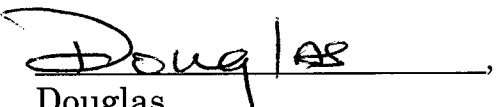
To the extent that appellant challenged the computation of time served, or other actions arising in the prison, appellant improperly raised these claims in the same petition challenging the validity of the judgment of conviction. NRS 34.738(3). Therefore, we affirm the order of the district court denying the petition.

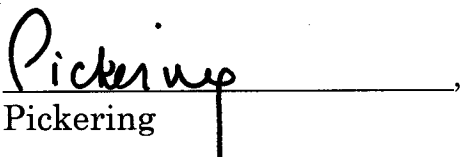
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

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.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. David Wall, District Judge
Jose Estrada
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk