

IN THE SUPREME COURT OF THE STATE OF NEVADA

WALTER D. MITCHELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53564

**FILED**

NOV 04 2009

TRACEE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
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; Elizabeth Goff Gonzalez, Judge.

On October 12, 2007, 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. The district court sentenced appellant to serve a total of two consecutive terms of 30 to 90 months in the Nevada State Prison. No direct appeal was taken.

On December 26, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a response. 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 25, 2009, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed: (1) his trial counsel was ineffective for failing to explain the plea agreement and explain potential

defenses; (2) his trial counsel was ineffective for failing to challenge the deadly weapon enhancement; (3) the deadly weapon enhancement violated double jeopardy; (4) the robbery and burglary convictions violated double jeopardy; (5) his trial counsel was ineffective for failing to prepare a defense presentence report; (6) his conviction violated equal protection because he was classified differently than other inmates who had similar convictions; and (7) his due process rights were violated.

Appellant filed his petition more than one year after entry of the judgment 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.

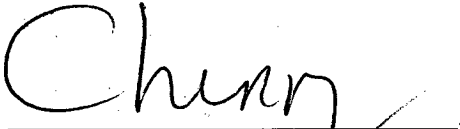


In an attempt to demonstrate cause for the delay, appellant argued that he was untrained in the law, and thus, the factual and legal basis for his claims was not reasonably available before the deadline. Appellant further claimed that trial counsel's failure to file a direct appeal constituted good cause.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition. Appellant failed to demonstrate that an impediment external to the defense excused the untimely filing of his petition. Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). Appellant's limited training and experience do not constitute good cause. See Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Appellant's claims were reasonably available during the one-year time period to file a timely petition. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Appellant failed to demonstrate that his belief that counsel had filed a direct appeal was reasonable; appellant failed to allege that he asked counsel to file an

appeal or expressed dissatisfaction to his counsel about his sentence and appellant failed to allege that counsel gave any indication that he would file a direct appeal in this case. Id. at 254-55, 71 P.3d at 507-08. Therefore, we affirm the order of the district court denying the petition as procedurally time 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.<sup>1</sup>

  
\_\_\_\_\_, J.  
Cherry  
  
\_\_\_\_\_, J.  
Saitta  
  
\_\_\_\_\_, J.  
Gibbons

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<sup>1</sup>We 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.

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Walter D. Mitchell  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk