

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK HALLEY HEIMRICH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53689

FILED

DEC 03 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *J. Shoop*
DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On October 24, 1979, the district court convicted appellant, pursuant to a guilty plea, of one count of first-degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison without the possibility of parole. This court affirmed the judgment of conviction and sentence on direct appeal. Heimrich v. State, 97 Nev. 358, 630 P.2d 1224 (1981). The remittitur issued on August 11, 1981. Appellant unsuccessfully sought post-conviction relief by way of a motion to correct an illegal sentence, a motion to withdraw a guilty plea and two post-conviction petitions for writs of habeas corpus. Heimrich v. State, Docket No. 21553 (Order Dismissing Appeal, October 24, 1990); Heimrich v. State, Docket No. 27043 (Order Dismissing Appeal, March 30, 1998); Heimrich v. Warden, Docket No. 35282 (Order of Affirmance, March 15, 2001); Heimrich v. State, Docket No. 43941 (Order of Affirmance, January 25, 2005).

On April 3, 2009, 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 April 3, 2009, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant claimed that his guilty plea was invalid because he was not correctly advised about his eligibility for a pardon. Appellant claimed that he was not informed of a purported, unofficial policy requiring him to retain counsel to apply for a pardon.

Appellant filed his petition approximately twenty-eight years after this court issued the remittitur from his direct appeal.¹ 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.

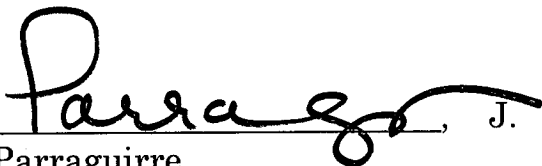
Appellant did not attempt to demonstrate good cause for the delay. To the extent that appellant claimed that he was unaware of policies relating to the Pardons Board, this argument does not provide good cause in this case. Notably, appellant was not required to receive information regarding the Pardons Board as it is a collateral consequence of the plea. Palmer v. State, 118 Nev. 823, 59 P.3d 1192 (2002); Anushevitz v. Warden, 86 Nev. 191, 467 P.2d 115 (1970). Therefore, any information regarding the pardons process does not provide good cause for a late petition. To the extent that appellant claimed that advice regarding a pardon constituted a fundamental miscarriage of justice, we conclude that the district court did not err in rejecting this argument because appellant failed to demonstrate that he was actually innocent. Pellegrini

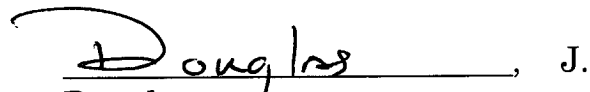
¹Moreover, the petition was filed more than sixteen years after the effective date of NRS 34.726.

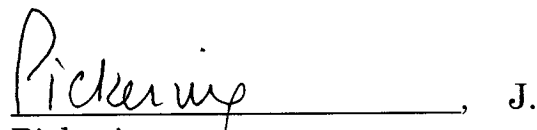
v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Therefore, we affirm the order of the district court dismissing the petition as procedurally barred.²

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.³


Parraguirre


Douglas


Pickering

²To the extent that appellant challenged the denial of a pardons application, the challenge is not cognizable in a post-conviction petition for a writ of habeas corpus. NRS 34.724.

³We 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. John P. Davis, District Judge
Frederick Halley Heimrich
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk