

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL VANDERHOOK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53975

**FILED**

FEB 03 2010

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.<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant filed his petition on December 26, 2008, more than twenty-four years after this court issued the remittitur from his direct appeal on July 19, 1984. Thus, appellant's petition was untimely filed.<sup>2</sup> See NRS 34.726(1); Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d

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<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>2</sup>We note that the petition was also untimely from the January 1, 1993, effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 5, at 75-76.

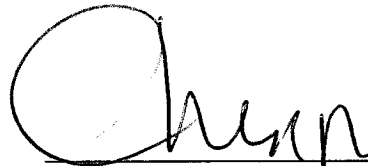
1132, 1133-34 (1998). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See id. at 1088, 967 P.2d at 1134.


In an attempt to demonstrate cause for the delay, appellant claimed that he is imprisoned in Arizona and Arizona does not have law libraries. Appellant failed to support this claim with specific facts, that if true, would warrant relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

Further, appellant failed to demonstrate that he would be prejudiced by the denial of his petition as untimely because his claims lack merit. Appellant claimed in his petition that Apprendi v. New Jersey, 530 U.S. 466 (2000), applied to his case and that his sentence was improperly enhanced by the district court. Even assuming Apprendi is retroactive, appellant failed to demonstrate that Apprendi would provide relief because the enhancement was found by the jury and not the district court. Appellant also claimed that the amendments made to NRS 193.165 in 2007 should apply retroactively to his sentence. However, this court has determined that the amendments to NRS 193.165 are not retroactive. See State v. Dist. Ct. (Pullin), 124 Nev. \_\_\_, 188 P.3d 1079, 1081 (2008).

Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

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<sup>3</sup>To the extent appellant sought modification of his sentence, appellant failed to demonstrate a material mistake of fact about his criminal record that worked to his extreme detriment. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

Further, 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. Michelle Leavitt, District Judge  
Michael Vanderhook  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk