

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELISANDRO MENDOZA A/K/A
ELISANDRO MENDOZA-LEON A/K/A
EUSANDRO ELISANDRO MENDOZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54407

FILED

JUN 10 2010

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.¹ Ninth Judicial District Court, Douglas County; David R. Gamble, Judge.

Appellant filed his petition on November 7, 2008, more than one year after the district court entered the judgment of conviction on October 23, 2007.² Appellant's petition was therefore untimely filed and,

¹A paper copy of a 205-page joint appendix was properly filed for this case. In addition, a CD-ROM containing 465 pages of documents was submitted, apparently pursuant to NRAP 30(f). As the CD-ROM did not conform to the requirements set forth in NRAP 30(c), we do not know the significance of the additional 260 pages. In the future, such a CD-ROM will not be accepted.

²Appellant's direct appeal was dismissed for lack of jurisdiction because it was untimely filed. Mendoza v. State, Docket No. 52299 (Order Dismissing Appeal, September 15, 2008). The proper date to measure timeliness in this case is the date of the entry of the judgment of conviction. See Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

accordingly, was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1). At an evidentiary hearing, the district court found good cause but, in finding appellant's claims to be meritless, found no prejudice. We conclude that the district court erred in finding good cause, but we agree that appellant did not demonstrate prejudice.

Appellant failed to demonstrate that any impediment external to the defense prevented him from filing his claims within the time limits of NRS 34.726(1). See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). In addition, appellant's claim that his petition was only filed two weeks late did not demonstrate good cause because the "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory." State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Also, appellant's claim that he lacked counsel after the entry of his judgment of conviction did not demonstrate good cause because (1) it is in part belied by the record as trial counsel did not withdraw until September 2008 and (2) appellant was not entitled to post-conviction counsel, see NRS 34.750; McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996).

Moreover, appellant failed to demonstrate prejudice as his claims lack merit. Appellant's claim of an involuntary guilty plea lacks merit because the record demonstrates he was advised of and received the appropriate maximum sentence. See Avery v. State, 122 Nev. 278, 284-85, 129 P.3d 664, 668 (2006); State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant v. State, 102 Nev. 268, 271, 721 P.2d 364, 367 (1986). Appellant's claim of inadequate pretrial investigation also lacks merit because he failed to demonstrate that trial counsel's performance

was deficient or that, but for any deficiency, “he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Finally, appellant’s claim of appeal deprivation lacks merit as he did not demonstrate that counsel should have known he would want to appeal or that he requested a notice of appeal within the statutory time limit. See Roe v. Flores-Ortega, 528 U.S. 470, 479-80 (2000); Thomas v. State, 115 Nev. 148, 150-51, 979 P.2d 222, 223-24 (1999).

Because appellant’s claims were procedurally barred and he failed to demonstrate good cause and prejudice, we conclude that the district court did not err in denying his petition.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

³See Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (declining to reverse correct result simply because it was based on the wrong reason).

cc: Hon. David R. Gamble, District Judge
Erik R. Johnson
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk