

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN JOEL DEBARR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34969

FILED

OCT 30 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus.

On April 13, 1994, the district court convicted appellant, pursuant to a guilty plea, of first degree murder with the use of a deadly weapon. The district court sentenced appellant to two consecutive terms of life in prison without the possibility of parole. This court dismissed appellant's direct appeal. See Debarr v. State, Docket No. 25776 (Order Dismissing Appeal, November 1, 1995). The remittitur issued on November 21, 1995.¹

On June 20, 1997, appellant, represented by appointed counsel, filed a petition for post-conviction relief.² The district court denied the petition as untimely. This appeal followed.

Appellant's petition was filed more than eighteen months after the remittitur issued on his direct appeal. Thus, appellant petition was untimely. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay. See id.

¹Appellant filed a petition for rehearing on November 22, 1995, which this court returned because the remittitur had issued. On December 5, 1995, appellant filed a motion to recall the remittitur, which this court denied.

²Although appellant entitled his petition as a "petition for post-conviction relief," the district court correctly considered appellant's petition as a post-conviction petition for a writ of habeas corpus because NRS 177.315 through NRS 177.385 were repealed January 1, 1993.

On appeal, appellant argues that counsel was not appointed to represent him until December 20, 1996 and that this constitutes cause to excuse his delay. This contention does not constitute good cause. See *Passanisi v. State*, 108 Nev. 318, 831 P.2d 1371 (1992) (holding that good cause must be an impediment external to the defense); *Phelps v. Director, Prisons*, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that appellant's limited intelligence or poor assistance in framing issues did not overcome procedural bar); see also *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997) (holding that there is no right to effective assistance of post-conviction counsel unless appointment of post-conviction counsel is required by statute). Moreover, we conclude that appellant has not demonstrated that failure to consider his petition would result in a fundamental miscarriage of justice. See *Mazzan v. Warden*, 112 Nev. 838, 921 P.2d 920 (1996). Accordingly, we conclude that the district court properly denied the petition. We therefore affirm the district court's order denying appellant's post-conviction petition for a writ of habeas corpus.

It is so ORDERED.

Young, J.
Young

Maupin, J.
Maupin

Becker, J.
Becker

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General
Clark County District Attorney
Patti & Sgro
Clark County Clerk