

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN GUAYDACAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54736

**FILED**

SEP 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Appellant filed his "Supplement to Petition for a Writ of Habeas Corpus" on August 6, 2009, almost eighteen months after this court issued the remittitur from his direct appeal on February 26, 2008.<sup>1</sup> 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 NRS 34.726(1).

Appellant failed to demonstrate any impediment external to the defense prevented him from filing his claims within the time limits of

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<sup>1</sup>See Guaydacan v. State, Docket No. 47146 (Order of Affirmance, January 30, 2008). As appellant did not file any post-conviction petition for a writ of habeas corpus, or any other document challenging the validity of his judgment of conviction and sentence prior to the "supplement" filed August 6, 2009, we conclude that the district court properly construed the August 6 document as the original post-conviction petition for a writ of habeas corpus.

NRS 34.726(1). See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Because appellant was not entitled to the assistance of post-conviction counsel, any claim that post-conviction counsel was ineffective for failing to file appellant's petition within the statutory time period is not sufficient to excuse appellant's delay in filing. See NRS 34.750; McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

*Hardesty*, J.  
Hardesty

*Douglas*, J.  
Douglas

*Pickering*, J.  
Pickering

cc: Hon. Stefany Miley, District Judge  
Lizzie R. Hatcher  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk