

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL ONTIVEROS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54891

**FILED**

SEP 10 2010

TRACEY K. LINDEMAN  
CLERK OF SUPREME COURT  
BY [Signature]  
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; Valorie Vega, Judge.

Appellant filed his petition on June 9, 2009, nearly three years after entry of the judgment of conviction on June 20, 2006. 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 undue prejudice. See NRS 34.726(1).

As good cause for filing his late petition, appellant claimed that he requested his trial counsel file an appeal on his behalf and that he believed that trial counsel had done so. At the evidentiary hearing on this issue, trial counsel both testified that appellant did not ask them to file an appeal. Appellant did not testify at the hearing. The district court found

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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).

both trial counsel to be credible and found appellant had not requested an appeal. Hathaway v. State, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003). We conclude that the district court's findings were based upon substantial evidence and were not clearly wrong. See Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Further, appellant admitted in his petition that he knew on May 30, 2008, that trial counsel had not filed an appeal. Appellant waited until June 9, 2009, more than one year after discovering that an appeal had not been filed, to file his petition. Therefore, appellant did not file his petition within a reasonable time after learning that a direct appeal had not been filed. Hathaway, 119 Nev. at 255, 71 P.3d at 508. Therefore, appellant failed to demonstrate good cause and the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

<sup>2</sup>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. Valorie Vega, District Judge  
Miguel Ontiveros  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk