

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK F. FUNDERBURKE,

No. 35048

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUL 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On June 23, 1997, the district court convicted appellant, pursuant to a plea of guilty, of robbery with use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of a minimum of twenty-six months to a maximum term of seventy-five months in the Nevada State Prison. Appellant did not file a direct appeal.

On July 12, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On October 7, 1999, the district court denied appellant's petition. This appeal followed.

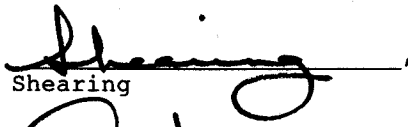
Appellant's petition was filed more than two years after entry of the judgment of conviction. Thus, appellant's

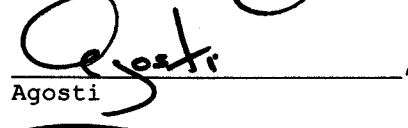
petition was untimely.¹ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.²

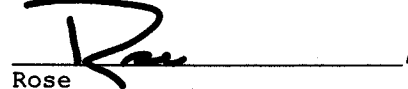
In an attempt to demonstrate good cause, appellant asserted that his procedural defects should be excused because he was a layman at law, unfamiliar with state court procedures for seeking relief. We determine that the district court did not err in deciding that appellant failed to demonstrate adequate cause to excuse his delay.³ Accordingly, appellant's petition was procedurally barred, and the district court did not err in denying appellant's petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose

¹See NRS 34.726(1) (providing that a petition for a writ of habeas corpus must be filed within one year after entry of the judgment of conviction, if no direct appeal was taken).

²See *id.*

³See *Lozada v. State*, 110 Nev. 349, 871 P. 2d 944 (1994) (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 the procedural bar).

⁴See *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), *cert. denied*, 423 U.S. 1077 (1976).

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General
Clark County District Attorney
Patrick F. Funderburke
Clark County Clerk