

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW JAMES TJELTVEIT,  
Appellant,  
vs.  
WARDEN, ELY STATE PRISON, E.K.  
MCDANIEL AND THE STATE OF  
NEVADA,  
Respondents.

No. 55773

**FILED**

**JAN 13 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE


This is an appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

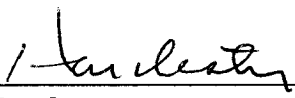
Appellant filed his petition on August 5, 2008, more than one year after entry of the judgment of conviction on June 7, 2007. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See NRS 34.726(1).

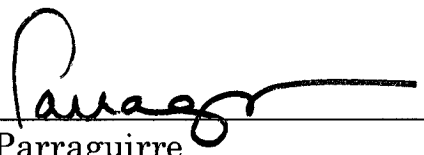
On appeal, appellant claims that the district court erred in denying his claim that he had good cause to overcome the procedural bar because he asked trial counsel to appeal his conviction and trial counsel failed to do so. Appellant fails to demonstrate that the district court erred in denying his good cause claim. In order to establish good cause for the delay based upon a petitioner's mistaken belief that counsel had filed a direct appeal, a petitioner must establish "that the petitioner reasonably believed that counsel had filed an appeal and that the petitioner filed a habeas petition within a reasonable time after learning that a direct appeal had not been filed." Hathaway v. State, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003). Appellant appears to have known by November 7, 2007,

that trial counsel did not file an appeal because appellant filed a proper person notice of appeal from his judgment of conviction. Further, appellant should have known that counsel did not file an appeal when his appeal was dismissed for being untimely on December 27, 2007, and the remittitur was issued on January 22, 2008. Tjeltveit v. State, Docket No. 50518 (Order Dismissing Appeal, December 27, 2007). Therefore, appellant still had more than five months to file a timely petition and waiting over seven months to file was unreasonable.<sup>1</sup> Accordingly, the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

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<sup>1</sup>We note that because appellant was convicted pursuant to a jury trial, trial counsel had an obligation to consult with appellant regarding whether appellant wanted to appeal his conviction. See Lozada v. State, 110 Nev. 349, 356, 871 P.2d 944, 948 (1994). Therefore, it was reasonable for appellant to believe that trial counsel had filed an appeal and appellant did not have to demonstrate that he requested an appeal in order to make an appeal deprivation claim. However, as stated above, appellant waited an unreasonable amount of time to file his petition, and his claim is procedurally barred.

cc: Hon. Steven P. Elliott, District Judge  
Merchant Law Firm, Ltd.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk