

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RAY HUGHES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56136

FILED

APR 06 2011

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a “Writ of Habeas Corpus; Motion for Clarification and Rehearing; on April 20, 2010.” Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

The State asserts that this court lacks jurisdiction to consider this appeal because the document that was denied by the district court was a “Motion for Clarification and Rehearing” and no statute or court rule authorizes an appeal from such an order. Although the motion filed below was titled “Motion for Clarification and Rehearing” and moved for clarification and rehearing of the denial of Hughes’ motion to modify sentence, the motion also raised new claims, including claims of ineffective assistance of counsel, and included a good cause argument on why the motion should not be procedurally barred. Based on the record filed in this court, it appears that the district court treated the motion for clarification or rehearing as a post-conviction petition for a writ of habeas corpus, and on April 20, 2010, the district court ordered the “Petition for Writ of Habeas Corpus” denied. Pursuant to an order from this court, the


district court subsequently entered a summary order denying the post-conviction petition for a writ of habeas corpus.


We conclude we have jurisdiction to consider this appeal to the extent that the district court treated and resolved the motion for clarification or rehearing as a post-conviction petition for a writ of habeas corpus. See NRS 34.575(1); NRAP 4(b)(2). However, to the extent appellant Michael Ray Hughes is attempting to appeal any denial of his request for clarification or rehearing of his motion to modify his sentence, we lack jurisdiction because no statute or court rule authorizes such an appeal. Phelps v. State, 111 Nev. 1021, 1022-23, 900 P.2d 344, 345 (1995).

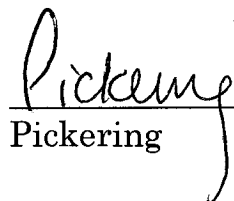
Hughes claims that the district court erred by denying his claims that his conviction violated the Double Jeopardy Clause and the district court relied on improper information at sentencing. We conclude that the district court did not err by denying these claims because the petition was not timely filed, see NRS 34.726(1), and Hughes failed to demonstrate that “an impediment external to the defense prevented him . . . from complying with the state procedural default rules,” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). See also State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory.”); Hathaway, 119 Nev. at 252-53, 71 P.3d at 506 (claims that are procedurally defaulted do not provide good cause to overcome procedural bars); Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995) (counsel’s failure to send defendant copies of his files did not constitute good cause to excuse untimely filing of post-conviction petition for writ of habeas corpus). Moreover, Hughes waived any claims that were appropriate for direct appeal when he voluntarily dismissed his direct

appeal. See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999); Hughes v. State, Docket No. 47283 (Order Dismissing Appeal, July 13, 2006). Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. James M. Bixler, District Judge
Ornoz Law Offices
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk