

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERNANDO ALEJANDRO PORTUGAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56180

FILED

NOV 18 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 denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on November 6, 2006, over one year after entry of the judgment of conviction on April 11, 2005. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause and undue prejudice. See id.

On appeal, appellant claims that the district court erred in denying his petition as procedurally barred. Appellant claims that the district court erred in not determining that juveniles should be held to a less strict standard when it comes to filing timely post-conviction petitions for writs of habeas corpus. He also claims that a juvenile would have a reasonable expectation that an appeal was filed. Appellant fails to cite to

case law that supports either of his assertions that a juvenile should be held to a different standard than an adult or that a juvenile would have a reasonable expectation that an appeal was filed.¹ At the evidentiary hearing, appellant did not testify that he asked counsel to file an appeal or that he believed that an appeal had been filed.² See Hathaway v. State, 119 Nev. 248, 254-55, 71 P.3d 503, 507-08 (2003) (holding that to show cause to overcome the procedural bar, a petitioner must demonstrate: (1) that he actually believed that trial counsel had filed a direct appeal, (2) that the belief was objectively reasonable, and (3) that he filed his petition within a reasonable time after he should have known that counsel had not

¹We note that according to the evidentiary hearing, appellant turned 18 about two months after sentencing.

²Appellant also claimed that prejudice is presumed because he was not informed of his right to appeal, and therefore, was not required to demonstrate that there were appealable issues. This claim was not raised in the district court, and we decline to address it for the first time on appeal. Further, we note that appellant pleaded guilty and counsel was not required to inform appellant of the right to pursue a direct appeal unless the defendant inquired about an appeal or there existed “a direct appeal claim that has a reasonable likelihood of success.” Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470, 479-80 (2000); Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 659 (1999). Appellant was also informed of his limited right to appeal in his guilty plea agreement.

filed the notice of appeal). Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Elissa F. Cadish, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk