

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL A. RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56395

FILED

NOV 12 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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, or alternatively, a petition for a writ of mandamus or request for declaratory judgment.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant filed his petition on April 12, 2010, almost three years after entry of the judgment of conviction on May 11, 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 id.

Appellant first argued that the procedural bars did not apply because he was not challenging the validity of the judgment of conviction but rather the constitutionality of the laws at issue, jurisdiction, and this court's interpretation of NRS 193.165. Appellant's argument was without merit. Appellant's claims challenge the validity of the judgment of

¹This 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).

conviction, and thus, the procedural bars do apply in this case.² NRS 34.720(1); NRS 34.724(1).

Next, he appeared to argue that a fundamental miscarriage of justice should overcome application of the procedural bars. Specifically, he argued that his due process rights had been violated because the laws reproduced in the Nevada Revised Statutes did not contain an enacting clause as required by the Nevada Constitution. Nev. Const. art. 4, § 23. He further claimed that this court erroneously interpreted NRS 193.165 to require a consecutive sentence and that the robbery statute was void for vagueness. Appellant did not demonstrate a fundamental miscarriage of justice as his arguments fell short of demonstrating actual innocence. Calderon v. Thompson, 523 U.S. 538, 559 (1998); Schlup v. Delo, 513 U.S. 298, 327 (1995); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude that the district court did not err in denying appellant's petition as procedurally barred.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

²Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.

³We further conclude that the district court did not err in denying his request for a writ of mandamus or declaratory judgment. NRS 34.170.

cc: Hon. Michelle Leavitt, District Judge
Miguel A. Rodriguez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk