

IN THE SUPREME COURT OF THE STATE OF NEVADA

AVERY ALLEN CHURCH, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56402

FILED

OCT 05 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
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. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.


Appellant filed his petition on March 5, 2010, one year and two days after the issuance of the remittitur on direct appeal on March 3, 2009. Church v. State, Docket No. 48741 (Order of Affirmance, February 3, 2009). Thus, appellant's petition was untimely filed, and was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See NRS 34.726(1).

In an attempt to excuse his procedural defects, appellant argues that the remittitur date should be calculated based on the date that remittitur is received by the district court, rather than the date remittitur is issued by this court. We reject this argument. First, the plain language of NRS 34.726(1) clearly mandates that a post-conviction petition be filed within one year of when this court "issues" its remittitur. Second, this court has specifically held that the remittitur date is the date that remittitur is issued, not when the district court clerk files the remittitur. Gonzales v. State, 118 Nev. 590, 593, 53 P.3d 901, 902 (2002).

We also reject appellant's argument that the confusing nature of the remittitur form and file stamps constituted good cause for his delay. Any confusion in appellant's comprehension of the remittitur form is not an impediment external to the defense, and does not provide a legal excuse for appellant's failure to comply with the deadline requirements of NRS 34.726(1). See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Appellant had a year to resolve any confusion regarding the deadline for filing a post-conviction petition for a writ of habeas corpus, and chose not to do so. This resulted in an untimely petition.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Pickering


_____, Sr. J.
Rose


_____, Sr. J.
Shearing

¹We also decline appellant's invitation to apply equitable tolling to the filing of post-conviction petitions.

²The Honorables Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.

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