

IN THE SUPREME COURT OF THE STATE OF NEVADA

ENRIQUE BANUELOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56711

FILED

SEP 15 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; Janet J. Berry, Judge.

Appellant filed his petition on September 4, 2009, more than one year after entry of the judgment of conviction on March 7, 2008.¹ 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 he has cause for his delay because counsel failed to advise him of the right to appeal, and consequently, trial counsel failed to file an appeal on his behalf. Appellant fails to demonstrate cause for the delay as he did not allege that he asked trial counsel to file an appeal and that counsel refused to do so, or that he believed that counsel had filed an appeal on his behalf. Hathaway, 119

¹No direct appeal was taken.

Nev. at 254, 71 P.3d at 507. Therefore, the district court did not err in denying this claim.

Next, appellant claims that he has cause for the delay because his access to the law library was limited by the fact that he does not speak, read or write English, and the materials are all in English.² The district court determined that appellant failed to demonstrate an official interference or impediment external to the defense. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Appellant fails to demonstrate that the district court erred in this determination because the prison has procedures in place so that inmates can have access to the library. Further, even assuming that the alleged language barrier would constitute cause, appellant failed to raise any claim of error that worked to his actual and substantial disadvantage. See Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993). Appellant failed to demonstrate that counsel was deficient at sentencing because counsel did in fact argue that appellant should be sentenced to twenty to fifty years and counsel did present evidence in mitigation. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Further, appellant failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel presented additional evidence in mitigation of his sentence.

²Appellant also claims that the district court erred in dismissing his petition because the procedures for accessing the prison law library violated the equal protection clause when it comes to prisoners who do not speak English. Appellant did not raise this claim below, and we decline to address it for the first time on appeal. McNelson v. State, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Strickland, 466 U.S. at 687-88; Warden, 100 Nev. at 432-33, 683 P.2d 504, 505. Therefore, the district court did not err in denying these cause and prejudice claims, and we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Janet J. Berry, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk