


IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL PROVENZANO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56861

**FILED**

**APR 06 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
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.<sup>1</sup> Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant filed his petition on May 24, 2010, more than two years after the February 22, 2008, filing of his judgment of conviction.<sup>2</sup> Appellant's petition was therefore untimely filed and, accordingly, was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See NRS 34.726(1).

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<sup>1</sup>This 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).

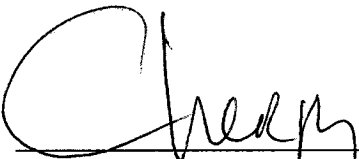
<sup>2</sup>No direct appeal was taken. An amended judgment of conviction was filed on November 12, 2008, but none of the claims raised in appellant's petition are relevant to those changes. See Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

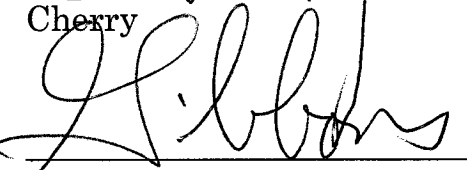
Appellant argued that he had good cause to excuse his delay because he was litigating a proper person motion to correct an illegal sentence, he was denied all access to legal materials for the first ten months of his confinement, and trial counsel refused to timely deliver his case files. First, appellant's litigation of his motion did not constitute an impediment external to the defense that prevented him from filing a timely post-conviction habeas petition. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Second, assuming without deciding that appellant was denied access to legal materials until January 9, 2009, he nevertheless waited 16 months to file his petition and has failed to explain the entire length of his delay. See id.


Finally, counsel's belated delivery of appellant's case files did not demonstrate cause for the delay. Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995). Notably, appellant was not diligent in seeking his files, first filing a request for them in July 2009, 17 months after the filing of his judgment of conviction. Moreover, he did not demonstrate prejudice from the delay. The majority of the claims raised in his petition were based on facts that appellant would have known independent of his files. The only claims for which he may have needed his files revolved around grand jury proceedings, but in pleading guilty, appellant waived any issues that arose prior to the entry of his plea. Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975). We therefore conclude that the district

court did not err in denying appellant's petition as procedurally time barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Valerie Adair, District Judge  
Paul Provenzano  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.