

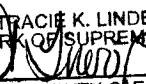
IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MANUEL HERNANDEZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57041

FILED

MAR 18 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.¹ Third Judicial District Court, Churchill County; Leon Aberasturi, Judge.


Appellant filed his petition on July 16, 2010, more than two years after issuance of the remittitur on direct appeal on November 13, 2007. Hernandez v. State, Docket Nos. 48752 and 48754 (Order of Affirmance, October 17, 2007). 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.

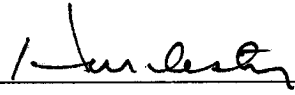
In an attempt to demonstrate cause, appellant claimed that he believed that counsel was pursuing a motion to withdraw a guilty plea on his behalf and that he was transferred between state and federal custody which made it difficult to pursue post-conviction relief. Appellant failed to demonstrate an impediment external to the defense. See Hathaway v.

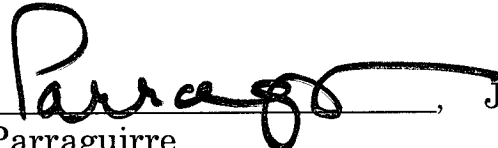
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Appellant could have filed his post-conviction petition for a writ of habeas corpus while counsel was pursuing the motion to withdraw his plea. Further, appellant failed to allege how his stay in federal custody prevented him from pursuing a post-conviction petition for a writ of habeas corpus. Therefore, the district court did not err in denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Leon Aberasturi, District Judge
Frank Manuel Hernandez, Jr.
Attorney General/Carson City
Churchill County District Attorney
Churchill County Clerk

²We 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.