

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LEE TURNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57070

FILED

MAR 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
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 Eighth Judicial District Court, Clark County; David B. Barker, Judge.

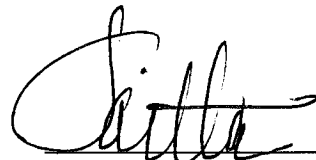
Appellant filed his petition on June 14, 2010, more than one year after this court issued the remittitur on direct appeal on June 9, 2009. Turner v. State, Docket No. 51620 (Order of Affirmance, May 15, 2009). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See id.

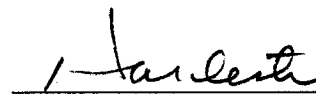
Appellant asserted that the one-year time period should not begin when this court issues the remittitur, but rather the one-year period should begin when the remittitur is filed in this court and received by the

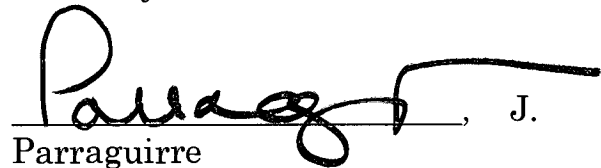
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

defendant or his counsel. This court has held that pursuant to NRS 34.726, the measure for determining the time for filing a timely post-conviction petition for a writ of habeas corpus is from the date that this court "issues" the remittitur and not from the date it is received or subsequently filed in this court. Gonzales v. State, 118 Nev. 590, 593, 53 P.3d 901, 902 (2002). Appellant did not otherwise attempt to demonstrate good cause and did not file a response to the State's motion to dismiss the petition as procedurally time barred. NRS 34.750(4). Under these circumstances, we conclude that the district court did not err in determining that the petition was procedurally time barred and without good cause. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. David B. Barker, District Judge
David Lee Turner
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk