

IN THE SUPREME COURT OF THE STATE OF NEVADA


DAVID ANTHONY JOYCE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57248

FILED

MAY 09 2011

ORDER OF AFFIRMANCE

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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; Valerie Adair, Judge.


Appellant filed his petition on June 7, 2010, over one year after issuance of the remittitur on direct appeal on May 27, 2009. Joyce v. State, Docket No. 52335 (Order of Affirmance, May 1, 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.

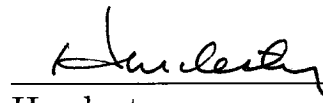
In an attempt to demonstrate cause, appellant claimed that he sent his petition to be mailed on May 28, 2010, and that it was mailed on June 1, 2010. Appellant claimed that his petition would have been timely filed absent official interference because the remittitur was not filed in the

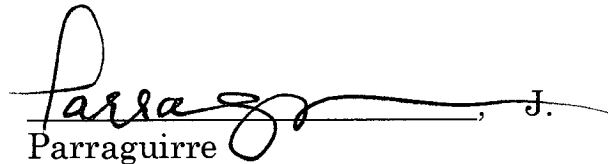
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

district court until June 4, 2009. Appellant failed to demonstrate good cause because appellant is mistaken as to what date regarding the remittitur matters in determining whether a petition is timely filed. It is the issue date of the remittitur that is the measure for timeliness and not the date the remittitur is filed in the district court. Gonzales v. State, 118 Nev. 590, 593, 53 P.3d 901, 902 (2002). The remittitur issued on May 27, 2009, and appellant's petition was untimely. Further, we note that the prison mailbox rule does not apply to post-conviction petitions for writs of habeas corpus. Id. at 595, 53 P.3d at 904. Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
David Anthony Joyce
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk