

IN THE SUPREME COURT OF THE STATE OF NEVADA

HALDORA CARDONA FONG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57369

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

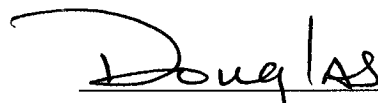
This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

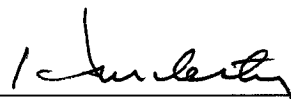
Appellant Haldora Fong filed an untimely post-conviction petition for a writ of habeas corpus arguing that trial counsel provided ineffective assistance of counsel by failing to challenge her first-degree arson charge for probable cause at a preliminary hearing. Because Fong has not demonstrated good cause for failing to meet the filing requirements of NRS 34.726, we conclude that her petition is procedurally barred. See State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (explaining that procedural bars are mandatory); see also Gonzales v. State, 118 Nev. 590, 594, 53 P.3d 901, 903 (2002) (explaining that prison mailbox rule does not apply to post-conviction habeas petitions).

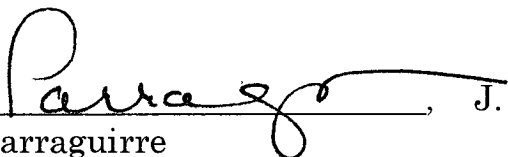
However, even if Fong had filed a timely petition, her claim of ineffective assistance of counsel was properly dismissed. Fong argues that the State's factual allegations against her did not support a conviction for first-degree arson because NRS 205.010 does not include burning objects located within the structure. We disagree. NRS 205.005 clearly defines

the term "set fire to" to include the scorching, charring, or burning of a structure or "anything therein." Therefore, trial counsel was not ineffective in failing to challenge the first-degree arson charge for probable cause. See Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 31-33 (2004) (explaining that petitioner has the burden of proving by a preponderance of the evidence that counsel's performance was deficient and resulted in prejudice). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Steven R. Kosach, District Judge
Law Office of Thomas L. Qualls, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk