

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIO ARISPE-RIBERA A/K/A JULIO
C. ARISPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57436

FILED

SEP 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Anderson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

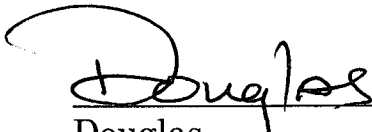
This is an appeal from an order of the district court dismissing appellant Julio Arispe-Ribera's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.


Arispe-Ribera contends that the district court erred by dismissing his untimely habeas petition.¹ Absent a showing of good cause and actual prejudice, an untimely filed habeas petition is procedurally barred. NRS 34.726(1). Here, even assuming good cause for the delay, the district court determined that Arispe-Ribera failed to demonstrate actual prejudice. See Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001) (actual prejudice requires a showing that the error worked to the petitioner's actual and substantial disadvantage). We conclude that the

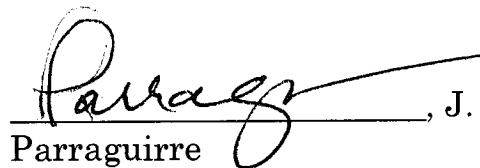
¹To the extent that Arispe-Ribera contends that the district court erred by refusing to treat his habeas petition as a motion to withdraw guilty plea, this claim lacks merit. See Hart v. State, 116 Nev. 558, 562, 1 P.3d 969, 971 (2000) ("the motion to withdraw a plea exists independently from provisions governing post-conviction relief").

district court's determination is supported by the record on appeal and it did not err by dismissing Arispe-Ribera's petition as procedurally barred. See State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (application of the procedural default rules is mandatory). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Chief Judge, Eighth Judicial District Court
Xavier Gonzales
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk