

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN SCOTT DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57459

FILED

JUN 08 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Anderson
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; Abbi Silver, Judge.


Appellant filed his petition on August 11, 2010, more than one year after entry of the judgment of conviction on June 30, 2009. Thus, appellant's petition was untimely filed and procedurally barred absent a demonstration of cause for the delay and undue prejudice. See NRS 34.726(1).


Appellant argued that the time for filing his petition was tolled while his appeal from the denial of a post-conviction motion to withdraw a guilty plea was pending in this court. NRS 34.726 does not provide for a tolling period for the time an appeal is pending in this court from the denial of a post-conviction motion to withdraw a guilty plea.

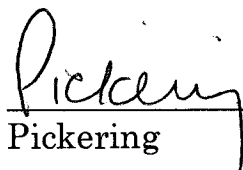
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

Next, appellant appeared to argue that he had cause for the delay because he did not have law library access and was denied help or counsel. Appellant failed to demonstrate that the prison's procedures were inadequate to provide meaningful access to the courts, particularly in light of his filing of a post-conviction motion to withdraw a guilty plea during the time period for filing a timely post-conviction petition for a writ of habeas corpus. Therefore, we conclude that the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Abbi Silver, District Judge
Kevin Scott Davis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²On April 4, 2011, this court received a proper person motion to consolidate this appeal with Docket No. 58022. No good cause appearing, we deny the motion.