

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS AMIEVA,

No. 35257

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**AUG 29 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from orders of the district court denying appellant's motion for enlargement of time, motion for the appointment of counsel for post-conviction proceedings, and a post-conviction petition for a writ of habeas corpus.

On November 21, 1994, the district court convicted appellant, pursuant to a jury verdict, of two counts of sexual assault. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole.

Appellant filed a timely notice of appeal from his conviction. On May 22, 1998, this court remanded the case to the district court for amendment of the judgment of conviction to set forth the restitution requirement in a definite dollar amount. On June 10, 1998, this court issued its remittitur.<sup>1</sup>

<sup>1</sup>Amieva v. State, Docket No. 26736 (Order of Remand, May 22, 1998).

On July 10, 1998, the district court filed an amended judgment that further ordered appellant to pay the statutory \$25 administrative assessment fee and restitution in the amount of \$1,840. Appellant was given credit for 176 days time served.

On July 7, 1999, appellant filed a "motion for enlargement of time." The State did not oppose the motion. On July 23, 1999, the district court granted the motion.

On October 19, 1999, appellant filed a motion for the appointment of counsel for post-conviction proceedings, and a post-conviction petition for a writ of habeas corpus. On November 3, 1999, upon further review, the district court reversed the order granting appellant's motion for enlargement of time. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On November 3, 1999, the district court denied appellant's petition and motions. This appeal followed.

Appellant filed his petition over sixteen months after this court issued the remittitur from his direct appeal. Accordingly, appellant's petition was procedurally barred as untimely, absent both a demonstration of cause for the delay and prejudice.<sup>2</sup> Appellant made no attempt to demonstrate cause for the delay in his motions or his petition for a writ of habeas corpus. Our review of the record on appeal

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<sup>2</sup>See NRS 34.726(1) (providing that a petition for a writ of habeas corpus must be filed within one year after this court issues the remittitur from a direct appeal).

indicates that there may have been some uncertainty as to whether appellant was required to show cause for the delay after the district court initially granted appellant's "motion for enlargement of time." Nevertheless, even assuming appellant can demonstrate cause for his failure to comply with the procedural rules, appellant failed to demonstrate that he would be unduly prejudiced by the dismissal of his petition because his claims lack merit.<sup>3</sup> Therefore, we conclude the district court did not err in applying the procedural bar to appellant's petition, and thus, we affirm the decision of the district court.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young J.  
Young  
Leavitt J.  
Leavitt  
Becker J.  
Becker

<sup>3</sup>See NRS 34.726(1)(b).

<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

cc: Hon. Steven P. Elliott, District Judge  
Attorney General  
Washoe County District Attorney  
Jesus Amieva  
Washoe County Clerk