

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK HALLEY HEIMRICH,

No. 35282

Appellant,

vs.

WARDEN, LOVELOCK CORRECTIONAL  
CENTER, JACKIE CRAWFORD,

Respondent.

**FILED**

MAR 15 2001

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

Appellant was convicted in 1979, pursuant to a guilty plea, of first degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison without the possibility of parole. This court affirmed appellant's conviction.<sup>1</sup> The remittitur issued on August 11, 1981.

Appellant filed a motion to correct an illegal sentence. The district court denied appellant's motion. This court dismissed his appeal.<sup>2</sup>

On April 14, 1995, appellant filed a motion to withdraw his guilty plea in the district court. The district court denied the motion. This court dismissed his appeal.<sup>3</sup>

<sup>1</sup>Heimrich v. State, 97 Nev. 358, 630 P.2d 1224 (1981).

<sup>2</sup>Heimrich v. State, Docket No. 21553 (Order Dismissing Appeal, October 24, 1990).

<sup>3</sup>Heimrich v. State, Docket No. 27043 (Order Dismissing Appeal, March 30, 1998).

On November 8, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 15, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately eighteen years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>4</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>5</sup>

In an attempt to demonstrate cause for the delay, appellant argued that the delay was caused by the State's refusal to obey the law. Appellant believed that a fundamental miscarriage of justice had occurred because he was actually innocent and that the State had allegedly withheld exculpatory evidence that would have supported appellant's alibi. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate adequate cause to excuse his delay. Further, we conclude that appellant did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice.<sup>6</sup>

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not

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<sup>4</sup>See NRS 34.726(1).

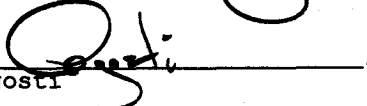
<sup>5</sup>See *id.*

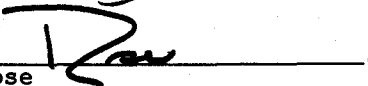
<sup>6</sup> See *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996) (stating that a petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice).

entitled to relief and that briefing and oral argument are unwarranted.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

  
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Shearing J.

  
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Agosti J.

  
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Rose J.

cc: Hon. John P. Davis, District Judge  
Attorney General  
Nye County District Attorney  
Frederick Halley Heimrich  
Nye County Clerk

<sup>7</sup>See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

<sup>8</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.