

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT DEAN CHARLTON,

No. 35286

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

AUG 10 2001

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

On May 16, 1995, the district court convicted appellant, pursuant to a guilty plea, of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 7 years in the Nevada State Prison. Appellant did not file a direct appeal.

On June 29, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 8, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than 4 years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.²

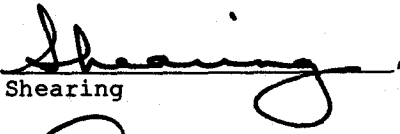
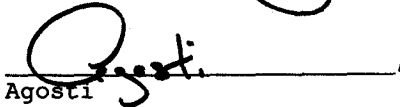
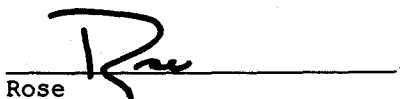
¹See NRS 34.726(1).

²See id.

In an attempt to demonstrate cause for the delay, appellant argued that he was never informed of his right to a direct appeal. Based upon our review of the record on appeal, we conclude that the district court did not err in applying NRS 34.726(1) to bar appellant's petition because appellant failed to demonstrate good cause to excuse his delay.³ Moreover, appellant waived "the right to appeal any conviction to the Nevada Supreme Court" pursuant to the guilty plea memorandum.⁴

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


Shearing, J.

Agosti, J.

Rose, J.

³See Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998) (holding that an "allegation that a claimant was deprived of a direct appeal without his or her consent, does not constitute good cause to excuse the untimely filing of a petition pursuant to NRS 34.726"); see also Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999) (holding "there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal"); Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999) (holding trial counsel "is not obliged to obtain consent not to file the appeal where the client does not express a desire to challenge the proceedings").

⁴See Cruzado v. State, 110 Nev. 745, 879 P.2d 1195 (1994).

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. John S. McGroarty, District Judge
Attorney General
Clark County District Attorney
Robert Dean Charlton
Clark County Clerk