

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY
MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58023

FILED

JUL 13 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; Donald M. Mosley, Judge.

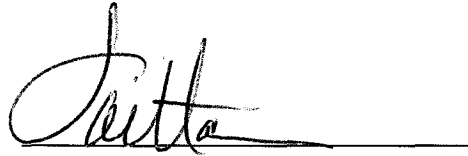
Appellant filed his petition on April 30, 2010, almost 2 years after issuance of the remittitur on direct appeal on June 3, 2008. Martinez v. State, Docket No. 49608 (Order of Affirmance, May 7, 2008). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See id.

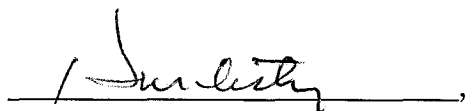
It appears that appellant claimed that he had cause for the delay because his appellate counsel failed to inform him of the resolution of the direct appeal, because appellant could not read or write English,

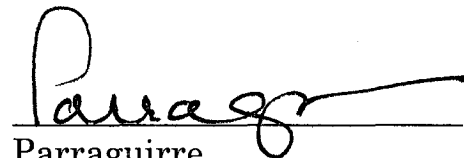
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

and because appellant was ignorant in the law. Appellant failed to demonstrate that an impediment external to the defense excused his delay. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). To the extent that appellant claimed that his procedural defects should be excused because he was actually innocent, appellant did not demonstrate actual innocence because he failed to show that “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.” Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude that the district court did not err in denying appellant's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


Saitta, J.


Hardesty, J.


Parraguirre, J.

²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Donald M. Mosley, District Judge
Fredys A. Martinez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk