

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK SKINNER,

No. 35338

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 July 8, 1992, the district court convicted appellant, pursuant to a guilty plea, of burglary (count I) and first degree murder (count II). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for count I, a term of ten years; for count II, a term of life without the possibility of parole to be served consecutively to count I. This court dismissed appellant's untimely appeals from his judgment of conviction and sentence for lack of jurisdiction.¹ The remittiturs issued on December 2, 1997, and February 3, 1998.

On December 7, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 15, 1999, appellant filed a supplement to the petition. Pursuant to NRS 34.750, the district court declined to appoint counsel to represent appellant. On February 26, 1999, the court conducted an evidentiary hearing. The court continued the hearing to allow

¹Skinner v. State, Docket No. 30909 (Order Dismissing Appeal, November 12, 1997); Skinner v. State, Docket No. 31594 (Order Dismissing Appeal, January 15, 1998).

appellant to file supplemental points and authorities in support of his petition. On August 19, 1999, appellant filed a supplemental petition. The State opposed the supplemental petition arguing that appellant's petition was procedurally time barred. The State also specifically pleaded laches. On October 28, 1999, the court conducted another evidentiary hearing. On November 17, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than 6 years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁴

In an attempt to excuse his procedural defects, appellant argued that his petition was timely filed because it was filed within one year after this court issued the remittitur from his direct appeal. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. This court has held that the one-year period for filing a timely petition "begins to run from the issuance of the remittitur from a timely direct appeal to this court from the judgment of conviction or from the entry of the judgment of conviction if no direct appeal is taken."⁵ Both of appellant's direct appeals were untimely filed; therefore, the one-year period for filing a

²See NRS 34.726(1).

³See NRS 34.726(1).

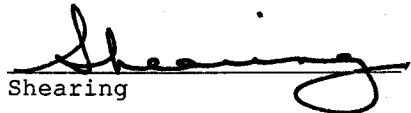
⁴See NRS 34.800(2).

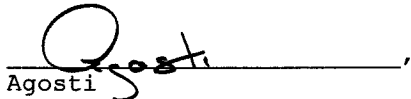
⁵Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

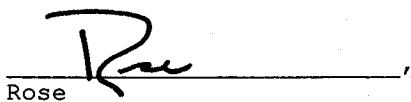
timely petition began to run from entry of the judgment of conviction. It also appears that appellant argued he had cause to excuse his delay because his attorney failed to perfect a direct appeal on his behalf and because he did not receive his files from his attorneys. We conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse his delay and also failed to overcome the presumption of prejudice to the State.⁶

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing J.


Agosti J.


Rose J.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Derrick Skinner
Clark County Clerk

⁶See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).