

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN A. COLWELL,

No. 35866

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUL 23 2001

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

ORDER OF AFFIRMANCE

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

On April 16, 1991, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree murder with the use of a deadly weapon (count 1), one count of first degree kidnapping (count 2), and one count of robbery with the use of a deadly weapon (count 3). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for count 1, two consecutive terms of life without the possibility of parole; for count 2, one term of life with the possibility of parole, to be served consecutively to count 1; and for count 3, two consecutive terms of fifteen years, to be served consecutively to counts 1 and 2. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.¹

On November 10, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in

¹Colwell v. State, Docket No. 32432 (Order Dismissing Appeal, July 2, 1998).

the district court. The State filed a motion to dismiss the petition on the ground that it was procedurally time barred. The district court appointed counsel to represent appellant, and counsel filed an opposition to the motion to dismiss. The State filed a response to the opposition. On August 11, 1999, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than seven 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

In an attempt to demonstrate cause for the delay, appellant argued that his trial counsel failed to advise him of his right to a direct appeal and failed to file an appeal without his consent. Based upon our review of the record on appeal, we conclude the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse the delay.⁴

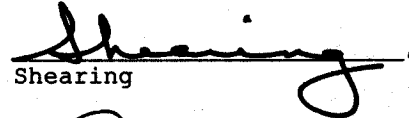
²See NRS 34.726(1); see also Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133 (1998) (holding that the one year time period in NRS 34.726(1) runs from the issuance of the remittitur from a timely direct appeal to this court).

³See NRS 34.726(1).

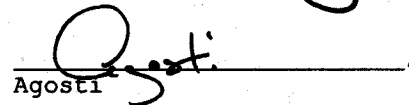
⁴See Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998) (holding that "an allegation that trial counsel was ineffective in failing to inform a claimant of the right to appeal from the judgment of conviction, or any other allegation that a claimant was deprived of a direct appeal without his or her consent, does not constitute good cause to excuse the untimely filing of a petition pursuant to NRS 34.726.").

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

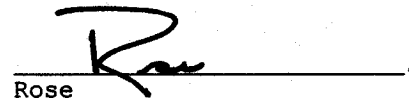
ORDER the judgment of the district court AFFIRMED.



Shearing J.



Agosti J.



Rose J.

cc: Hon. David R. Gamble, District Judge
Attorney General
Douglas County District Attorney
John A. Colwell
Douglas County Clerk

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