

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 35977

MONTI CALVERT,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

AUG 16 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. S. [Signature]*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

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

On September 10, 1998, the district court convicted appellant, pursuant to a guilty plea, of second degree murder and sentenced appellant to 25 years in the Nevada State Prison with a minimum parole eligibility of 10 years. Appellant filed a notice of appeal on December 30, 1998. This court dismissed the appeal for lack of jurisdiction. Calvert v. State, Docket No. 33556 (Order Dismissing Appeal, January 29, 1999).

On December 17, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent appellant in the post-conviction proceedings. The State moved to dismiss the petition as untimely. The district court granted the motion and dismissed the petition on March 30, 2000. This timely appeal followed.

Appellant contends that the district court erred in dismissing the petition as untimely. We disagree.

Appellant's petition was filed fifteen months after entry of the judgment of conviction. Thus, appellant's

petition was untimely. See NRS 34.726(1); see also Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133 (1998) (holding that one-year time period in NRS 34.726(1) runs from issuance of remittitur from timely direct appeal to this court, however, petitioner can overcome procedural bar by showing good cause for delay).¹ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See NRS 34.726(1).

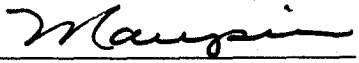
In an attempt to demonstrate good cause, appellant contends that his counsel failed to advise him of his right to appeal and the procedural requirements for filing an appeal or "other post-conviction remedies." This court has held that "an allegation that trial counsel was ineffective in failing to inform 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." Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998). Accordingly, appellant must demonstrate some other excuse for the delay in filing his petition. Because appellant failed to otherwise demonstrate adequate cause for the delay, some impediment external to the defense, appellant's petition was properly dismissed.² See

¹Appellant suggests that this court should not apply Dickerson and treat the petition as timely filed based on the date remittitur issued from the untimely direct appeal. Appellant argues that the rationale of Dickerson, to foreclose prisoners from abusing the writ by repeatedly filing untimely notices of appeal, "does not appear to have pressing significance" in this case because this is not a successive petition and appellant's claims have never been reviewed. We conclude that this contention lacks merit.

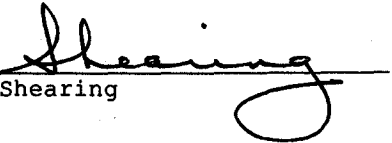
²We note that appellant's pursuit of habeas corpus relief in federal court does not constitute cause for the delay in filing his post-conviction petition in state court. See Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).

id. Additionally, appellant has not demonstrated that failure to consider his petition would result in a fundamental miscarriage of justice. See *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996) (stating that petitioner may be entitled to review of defaulted claims if failure to review claims "would result in a fundamental miscarriage of justice"). We therefore conclude that the district court properly dismissed the petition. Accordingly, we


ORDER this appeal dismissed.



Maupin J.



Shearing J.



Becker J.

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
Scott W. Edwards
Washoe County Clerk