

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 36069

FLINT ANDREW WADE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

FILED

JUL 05 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
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 August 27, 1997, the district court convicted appellant, pursuant to a guilty plea, of driving under the influence causing substantial bodily harm in violation of NRS 484.3795. The district court sentenced appellant to serve a term of 32 to 144 months in the Nevada State Prison. Appellant did not file a direct appeal.

On October 9, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The state moved to dismiss the petition as untimely. The district court appointed counsel and conducted an evidentiary hearing. On April 3, 2000, the district court dismissed appellant's petition based on the procedural bar and on the merits. This appeal followed.

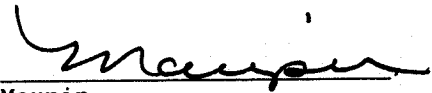
Appellant's petition was filed more than thirteen months after entry of the judgment of conviction. Thus, appellant's petition was untimely. See NRS 34.726(1) (providing that a petition for a writ of habeas corpus must be filed within one year after entry of the judgment of conviction, if no direct appeal was taken). Appellant's

petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See id.

In an attempt to demonstrate cause for the delay, appellant asserted that his trial counsel failed to inform him of his right to appeal the judgment of conviction and therefore he was deprived of a direct appeal without his consent. Appellant also argues that he suffered a closed head injury as a result of the accident involved in this case and was ignorant of his post-conviction remedies until he spoke with a prison law clerk. These contentions do not constitute good cause. See Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998) (holding "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"); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that appellant's limited intelligence or poor assistance in framing issues did not overcome procedural bar); 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"). 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.¹ See Harris, 114 Nev. at 959, 964 P.2d at 787; Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997); Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996); Passanisi v. Director, Dep't Prisons, 105 Nev. 63, 769 P.2d 72 (1989); see also Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (recognizing appellate courts will not disturb trial court's discretion in determining existence of good cause except for clear cases of abuse). We therefore

ORDER this appeal dismissed.


Maupin J.


Shearing J.


Becker J.

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Karla K. Butko
Washoe County Clerk

¹Because the district court properly dismissed the petition based on the procedural bar, we need not reach the merits of appellant's petition.