

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRISTOBAL VARELAS,

No. 36122

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JAN 02 2002

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 denying appellant's post-conviction petition for a writ of habeas corpus.

On January 3, 1994, the district court convicted appellant, pursuant to a jury verdict, of one count each of robbery with the use of a deadly weapon and possession of a firearm by an ex-felon. The district court sentenced appellant to serve a term of eight years for robbery, a consecutive term of eight years for the use of a deadly weapon, and a consecutive term of two years for possession of a firearm by an ex-felon in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on May 13, 1997.

On February 1, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On May 18, 2000, the district court denied appellant's petition. This appeal followed.²

¹Varelas v. State, Docket No. 25255 (Order Dismissing Appeal, April 24, 1997).

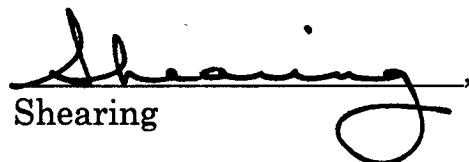
²We note that appellant's notice of appeal states that he is appealing from an order entered on January 24, 2000. Our review of the record reveals that no such order exists. However, we elect to construe appellant's notice of appeal as an appeal from the district court's order denying his petition for a writ of habeas corpus filed on May 18, 2000.

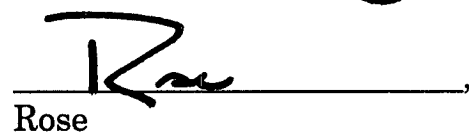
Appellant filed his petition more than two years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴


In an attempt to demonstrate cause for the delay, appellant argued that counsel did not inform him of the requirement that a post-conviction petition for a writ of habeas corpus must be filed within one year and he lacks legal experience. Appellant also argued that his counsel failed to file a direct appeal on his behalf. These explanations do not constitute good cause for appellant's delay in filing his petition.⁵ Moreover, we note that appellant did have a direct appeal in this court. Therefore, the district court did not err by denying appellant's petition.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

³See NRS 34.726(1).

⁴See *id.*

⁵See *Harris v. Warden*, 114 Nev. 956, 964 P.2d 785 (1998) (counsel's failure to file a direct appeal on defendant's behalf does not constitute good cause for filing an untimely petition); *Hood v. State*, 111 Nev. 335, 890 P.2d 797 (1995) (rejecting appellant's claim that trial counsel's failures justified the delay because those failures did not prevent appellant from filing a timely petition); *Phelps v. Director, Prisons*, 104 Nev. 656, 764 P.2d 1303 (1988) (concluding that legal ignorance and slight mental retardation is not good cause for filing an untimely habeas petition).

⁶See *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Cristobal Varelas
Clark County Clerk