

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELECIO CORRENO NUNEZ A/K/A
MELECIO NUNEZ-CARENO A/K/A
MELECIO C. NUNEZ,

No. 36140

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 29 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
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 November 18, 1996, the district court convicted appellant, pursuant to a guilty plea, of battery with the use of a deadly weapon (Count I) and burglary (Count II). The district court sentenced appellant to serve a term of 72 months with minimum parole eligibility in 24 months for Count I and a consecutive term of 72 months with minimum parole eligibility in 16 months for Count II in the Nevada State Prison. Appellant did not file a direct appeal.

On January 7, 1998, 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 March 3, 1998, the district court denied appellant's petition. Appellant did not appeal this decision.

On August 20, 1998, 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 October 15, 1998, the district court

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denied appellant's petition. Appellant's appeal was dismissed because his notice of appeal was filed prematurely.¹

On December 9, 1999, 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 April 12, 2000, the district court denied appellant's petition. This appeal followed.

Appellant's petition was filed more than three years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was also successive because he previously filed two proper person post-conviction petitions for writs of habeas corpus.³ Appellant's petition was procedurally barred absent a demonstration of cause and prejudice.⁴

In an attempt to excuse his procedural defects, appellant argued that his petition was late because his counsel failed to advise him of his right to a direct appeal and failed to argue for concurrent sentences. Appellant also claimed that he was unable to present a timely cognizable petition because he is unable to read, write, speak, or "articulate himself" in the English language and he is a layman at the law.

We conclude that the district court did not err in denying appellant's petition. 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."⁵ In addition, appellant's other excuses for the

¹Nunez v. State, Docket No. 33118 (Order Dismissing Appeal, November 20, 1998).

²See 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).

³See NRS 34.810(2).


⁴See NRS 34.726; NRS 34.810(3).


⁵Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998).

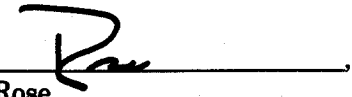
delay do not constitute good cause.⁶ Because appellant failed to otherwise demonstrate adequate cause for the delay, some impediment external to the defense, appellant's petition was properly denied.⁷

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Maupin


_____, J.
Shearing


_____, J.
Rose

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General/Carson City
Clark County District Attorney
Melecio Correno Nunez
Clark County Clerk

⁶See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

⁷See Harris, 114 Nev. 956, 964 P.2d 785; Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); see also Phelps, 104 Nev. 656, 764 P.2d 1303.

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).