

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

REYNALDO TAPIA-VEGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67461

FILED

JUN 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction motion to withdraw a guilty plea.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

In his January 9, 2015, motion to withdraw his guilty plea, appellant Reynaldo Tapia-Vega claimed he should be permitted to withdraw his plea because the terms of his plea agreement were breached. He asserted that the plea agreement contemplated imposition of two concurrent terms of 8-20 years, rather than the imposition of two consecutive terms of 4-20 years.² The State opposed the motion, asserting the motion should be construed as a post-conviction petition for a writ of

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude the record is sufficient for our review and briefing is unwarranted. See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²Tapia-Vega was convicted pursuant to an *Alford* plea of two counts of attempted lewdness with a child under the age of 14. *North Carolina v. Alford*, 400 U.S. 25 (1970).


habeas corpus, and moved to dismiss the motion as procedurally barred. *See Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 628 (2014) (holding that a post-conviction petition for a writ of habeas corpus is the exclusive remedy to challenge the validity of a guilty plea after sentencing and a post-conviction motion to withdraw a guilty plea should be construed as a post-conviction petition for a writ of habeas corpus). In reply, Tapia-Vega asserted that the clerk's 28 day delay in filing his motion to withdraw, along with his language barrier, constituted good cause and prejudice to overcome the procedural bars.


NRS chapter 34 bars petitions that are successive, abusive, and/or are filed more than one year after the filing of the judgment of conviction where no direct appeal was taken, unless the petitioner can demonstrate good cause and prejudice. *See* NRS 34.726(1); NRS 34.810(2)-(3); *see also State v. Eighth Judicial Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."). Here, the district court found that the petition was time-barred and Tapia-Vega failed to demonstrate good cause and prejudice to overcome the procedural bar.

We conclude the district court did not abuse its discretion by treating the motion as a post-conviction petition for a writ of habeas corpus and denying the petition. Tapia-Vega raised the same underlying claim in a prior post-conviction petition for a writ of habeas corpus that was also dismissed as procedurally barred. *See Tapia-Vega*, Docket No. 61506 (Order of Affirmance, April 10, 2013). He therefore failed to demonstrate that any delay in filing the instant motion or language

barrier constituted good cause and prejudice to excuse the instant procedural defects. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Stefany Miley, District Judge
Reynaldo Tapia-Vega
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We further conclude the district court did not abuse its discretion by denying Tapia-Vega's motion to appoint counsel.