

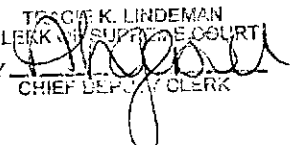
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE MENDOZA-GONZALEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67953

FILED

DEC 17 2015

TERRIE K. LINDEMAN
CLERK SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Appellant Jose Mendoza-Gonzalez filed his petition on November 25, 2014, more than a year after entry of the judgment of conviction on August 12, 2013. Thus, Mendoza-Gonzalez's petition was untimely filed. *See* NRS 34.726(1). Mendoza-Gonzalez's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

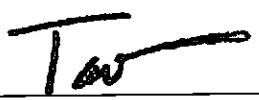
Mendoza-Gonzalez claimed he had good cause to excuse the procedural defect because he had requested counsel to file an appeal and he believed counsel had done so and a direct appeal was pending. The district court held a hearing on the good cause claim. Mendoza-Gonzalez's counsel testified he did not recall Mendoza-Gonzalez asking him to file an appeal after sentencing. Counsel further testified he never received any


¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

correspondence from Mendoza-Gonzalez after sentencing. In April 2014, Mendoza-Gonzalez submitted a motion to withdraw counsel in the district court, which was forwarded to his counsel. Counsel then moved to withdraw and the motion was granted on May 12, 2014. The district court found counsel's testimony was credible and Mendoza-Gonzalez's testimony that he asked counsel to file an appeal was not credible. The district court further found, given Mendoza-Gonzalez's actions, the record did not support Mendoza-Gonzalez's claim that he had any actual expectation that a direct appeal had been filed. The district court determined Mendoza-Gonzalez failed to demonstrate good cause to excuse the procedural defect and denied the petition as untimely. The record supports the district court's findings and we conclude the district court did not err by denying the petition as procedurally barred. Therefore, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²We further conclude the district court did not abuse its discretion by denying Mendoza-Gonzalez's motion for the appointment of counsel.

In addition, we have reviewed all documents Mendoza-Gonzalez has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent he has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

cc: Hon. Carolyn Ellsworth, District Judge
Jose Mendoza-Gonzalez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk