

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HENRY MIRANDA-FUENTES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68742

FILED

DEC 29 2015

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

ORDER OF AFFIRMANCE

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

Appellant Henry Miranda-Fuentes filed his petition on May 8, 2015, more than one year after entry of the judgment of conviction on December 23, 2013.² Thus, Miranda-Fuentes's petition was untimely filed. *See* NRS 34.726(1). Miranda-Fuentes's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Miranda-Fuentes claimed he had good cause because he had asked his attorney to file a direct appeal and he thought his attorney had done so. The Nevada Supreme Court has held an appeal-deprivation claim may in certain circumstances provide good cause to excuse the filing

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).

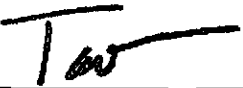
²No direct appeal was taken.

of an untimely petition. *See Hathaway v. State*, 119 Nev. 248, 254-55, 71 P.3d 503, 507-08 (2003). In order to demonstrate cause for the delay, a petitioner must demonstrate he actually believed trial counsel had filed an appeal, the belief was objectively reasonable, and he had filed a postconviction petition within a reasonable time after learning that no direct appeal had been filed. *Id.*

Miranda-Fuentes made no attempt to demonstrate his belief that counsel filed an appeal was objectively reasonable or that he filed this petition within a reasonable time after learning that no direct appeal had been filed. Accordingly, Miranda-Fuentes failed to demonstrate cause for the delay. Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

³We have reviewed all documents Miranda-Fuentes has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Miranda-Fuentes 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. Stefany Miley, District Judge
Henry Miranda-Fuentes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk