

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERTO TAYAG,

No. 36429

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 05 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
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 May 7, 1997, the district court convicted appellant, pursuant to a guilty plea, of two counts of first-degree murder. The district court sentenced appellant to serve in the Nevada State Prison two consecutive terms of life imprisonment with the possibility of parole after twenty (20) years. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on September 23, 1998.

On July 19, 1999, appellant, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On September 1, 1999, the district court denied appellant's petition. Appellant did not file an appeal from this decision.

¹Tayag v. State, Docket No. 30510 (Order Dismissing Appeal, September 4, 1998).

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On April 26, 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 July 31, 2000, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately fifteen (15) months after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.² Moreover, appellant's petition was successive because he had previously filed a petition for a writ of habeas corpus.³ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁴

In an attempt to excuse his procedural defects, appellant appeared to argue that his procedural defects should be excused for the following reasons: (1) that he is "ignorant of the law;" (2) that "when he was transferred from Ely State Prison his legal documents were missing during transport;" (3) that the instant petition was timely because it was filed within six (6) months of the denial of his previous habeas petition; and (4) that laches did not apply. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that

²See NRS 34.726(1).

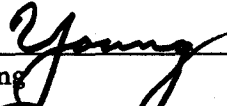
³See NRS 34.810(2).


⁴See NRS 34.726(1); NRS 34.810(3).


appellant failed to adequately excuse his procedural defects.⁵

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.⁷


_____. J.
Young


_____. J.
Agosti


_____. J.
Leavitt

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General/Carson City
Clark County District Attorney
Alberto Tayag
Clark County Clerk

⁵See Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133 (1998) (holding that the one-year time period in NRS 34.726(1) runs from issuance of remittitur from timely direct appeal to this court); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995) (holding that counsel's failure to send petitioner his files did not constitute good cause for filing an untimely petition); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that the petitioner's limited intelligence and poor assistance in framing issues did not overcome the procedural bar); See also NRS 34.800(2).

⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁷We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.