

IN THE SUPREME COURT OF THE STATE OF NEVADA

PEDRO AGUIRRE,

No. 36498

Appellant,

FILED

vs.

OCT 25 2000

THE STATE OF NEVADA,

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Respondent.

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus.

On March 26, 1997, the district court convicted appellant, pursuant to a guilty plea, of trafficking in a controlled substance in violation of NRS 453.3385(3). The district court sentenced appellant to serve a term of 10-25 years in the Nevada State Prison; he was given credit for 130 days time served. Appellant did not file a direct appeal.

On May 21, 1999, appellant filed a post-conviction petition for a writ of habeas corpus in the district court.¹ The State filed a motion to dismiss appellant's petition. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On June 16, 2000, the district court dismissed appellant's petition. Appellant subsequently filed a motion for reconsideration of the order dismissing the petition in the district court; the State opposed the motion. On July 26, 2000, the district court denied appellant's motion for reconsideration. This appeal followed.

¹Appellant retained counsel for the post-conviction proceedings.

Appellant filed his petition more than two years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See id.

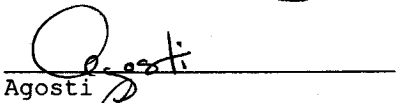
In an attempt to demonstrate cause for the delay, appellant contends that he (1) was not competent; (2) is monolingual for Spanish; and (3) did not have access to certain records, his file, or counsel.

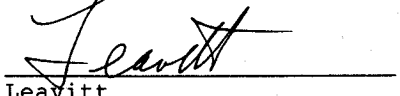
Our review of the record on appeal reveals that appellant failed to demonstrate that "some impediment external to the defense" was the cause for the delay in filing his petition. *Harris v. Warden*, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998); see also *Hood v. State*, 111 Nev. 335, 890 P.2d 797 (1995); *Phelps v. Director, Prisons*, 104 Nev. 656, 764 P.2d 1303 (1988). Therefore, we conclude that appellant has not demonstrated good cause sufficient to overcome the procedural bar, see NRS 34.726(1), and that the district court did not err in dismissing his petition.

Accordingly, the order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus is affirmed.

It is so ORDERED.


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. James W. Hardesty, District Judge
Attorney General
Washoe County District Attorney
Karla K. Butko
Washoe County Clerk