

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD STEPHEN MARKO,

No. 37289

Appellant,

FILED

vs.

DEC 05 2001

THE STATE OF NEVADA,

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

Respondent.

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 July 23, 1996, the district court convicted appellant, pursuant to a jury verdict, of one count of use of a controlled substance. The district court sentenced appellant to serve a term of nineteen months to forty-eight months in the Nevada State Prison. Appellant's sentence was suspended and appellant was placed on probation for a period of time not to exceed forty-eight months. On December 18, 1996, the district court revoked appellant's probation and executed the sentence. This court dismissed appellant's direct appeal.¹ The remittitur issued on April 21, 1998.

On December 13, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 January 2, 2001, the district court dismissed appellant's petition as untimely filed. This appeal followed.

Appellant filed his petition more than two years after this court issued the remittitur from his direct appeal. Thus, appellant's

¹Marko v. State, Docket No. 29227 (Order Dismissing Appeal, March 30, 1998).


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petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³


In an attempt to demonstrate cause for the delay, appellant argued that his appellate counsel was ineffective because he failed to send him the contents of all of his files, including the order dismissing his direct appeal, and therefore, appellant did not know his direct appeal had been dismissed until August 1, 2000. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant failed to demonstrate adequate cause to excuse the procedural defects.⁴

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.⁵ Accordingly, we


ORDER the judgment of the district court AFFIRMED.



Young J.



Agosti J.



Leavitt J.

²See NRS 34.726(1).

³See *id.*

⁴See *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); *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); *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).

⁵See *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

cc: Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Ronald Stephen Marko
Washoe County Clerk