

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID B. MARTIN,

No. 37390

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

NOV 16 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
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 10, 1996, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 12 to 24 months in the Nevada State Prison. On September 3, 1997, the district court resentenced appellant to correct his prior illegal sentence. On October 10, 1997, the district court entered an amended judgment of conviction reflecting that appellant was to serve two consecutive terms of 24 to 60 months in the Nevada State Prison. Appellant did not file a direct appeal.

On October 19, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, and appellant filed a reply. 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 9, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than three years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.<sup>1</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>2</sup>

<sup>1</sup>See NRS 34.726(1).

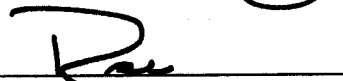
<sup>2</sup>See *id.*


In an attempt to demonstrate cause for the delay, appellant argued that the procedural rules announced in NRS 34.726 do not apply to his petition because his petition is an original petition for a writ of habeas corpus and it contains claims challenging jurisdiction which can be raised at any time. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. NRS 34.726 applies because appellant's petition is challenging the validity of his conviction and sentence.<sup>3</sup> Appellant failed to provide adequate cause to excuse his delay.<sup>4</sup>

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.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
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Shearing J.

  
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Rose J.

  
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Becker J.

cc: Hon. Mark W. Gibbons, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
David B. Martin  
Clark County Clerk

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<sup>3</sup>See NRS 34.724(2)(b).

<sup>4</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).