

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAUN M. MILLER,

No. 37779

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 20 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Schank*
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 November 15, 1999, the district court convicted appellant, pursuant to a guilty plea, of robbery. The district court sentenced appellant to serve a term of seventy-two (72) to one hundred-eighty (180) months in the Nevada State Prison. Appellant did not file a direct appeal.

On November 16, 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 March 23, 2001, the district court denied appellant's petition pursuant to NRS 34.726(1). This appeal followed.

Appellant filed his petition more than one year after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.² Although appellant alleged in his petition that his counsel failed to inform appellant of his statutory right to appeal, "an allegation that trial counsel was ineffective in failing to inform a claimant of the right to appeal from the judgment of conviction . . . does not constitute good cause to excuse the untimely filing of a petition

¹See NRS 34.726(1).

²See *id.*

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pursuant to NRS 34.726."³ Appellant did not otherwise attempt to demonstrate cause for the delay. Moreover, appellant's substantive claims are without merit, and he is therefore also unable to establish prejudice.⁴ Thus, the district court did not err in determining the petition was procedurally barred.

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.
Young

Agosti J.
Agosti

Leavitt J.
Leavitt

cc: Hon. John P. Davis, District Judge
Attorney General/Carson City
Nye County District Attorney/Tonopah
Shaun M. Miller
Nye County Clerk

³See Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998).

⁴See Hogan v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 716 (1993) (stating that it is the burden of the petitioner to demonstrate prejudice to excuse the procedural bar).

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