

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGAR SARABIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38506

FILED

APR 09 2003

ORDER OF AFFIRMANCE

JUDETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CLERK

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

On October 4, 1996, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery and one count of failing to stop on the signal of a police officer.¹ The district court sentenced appellant to serve concurrent terms in the Nevada State Prison of 36 to 120 months and 12 to 48 months. Appellant did not file a direct appeal.

On May 17, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court declined to conduct an evidentiary hearing. On August 13, 2001, the district court denied appellant's petition as untimely filed. This appeal followed.

¹Appellant was sixteen years of age at the time the instant offenses were committed, and had previously been adjudicated a delinquent on an unrelated felony offense of burglary in another case.

Appellant filed his petition more than four years after entry of the judgment of conviction. Thus, appellant's 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 argues that he was ignorant of the laws concerning juvenile certification and the procedural bars of post-conviction relief. Appellant concedes that "his ignorance of the law is insufficient to justify good cause for the delay." We agree.⁴

Further, appellant did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice;⁵ appellant's claim that he was deprived of due process by being improperly certified, convicted and sentenced as an adult lacks merit. Under the pre-

²See NRS 34.726(1).

³See id.

⁴See Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (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 appellant's limited intelligence or poor assistance in framing issues did not overcome the procedural bar).

⁵See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996) (stating that a petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice).

1997 version of NRS 62.040(1)(b)(2),⁶ the juvenile court did not have jurisdiction over a case where (1) the juvenile had previously been adjudicated for an act which would have been a felony if committed by an adult, and (2) it was alleged that the juvenile committed an offense involving a deadly weapon at a time when he was at least sixteen years old. Here, at the time he was charged with the instant offenses, appellant had previously been adjudicated a delinquent for the felony offense of burglary in another case. Further, at the time the transportation order for adult prosecution was filed in the instant case, appellant was also being charged with committing assault with the use of a deadly weapon and robbery with the use of a deadly weapon. Accordingly, under the version of NRS 62.040(1)(b)(2) in effect at that time, there was no need for the juvenile court to certify appellant to be tried as an adult prior to filing the transportation order for adult prosecution because the juvenile court lacked original jurisdiction over appellant.⁷ Thus, appellant has failed to demonstrate that he was not properly processed under the statutory scheme or that any constitutional infirmity in the scheme exists. We


⁶Because the offense was committed prior to October 1, 1997, the district court applied the version of the statute in effect prior to the 1997 amendments. See 1995 Nev. Stat., ch. 444, § 2, at 1342.

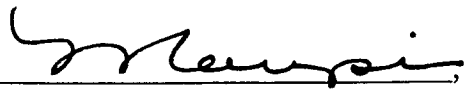
⁷"A juvenile defendant does not need to be certified as an adult when the charged offense is excluded from the statutory definition of a delinquent act." Elvik v. State, 114 Nev. 883, 894, 965 P.2d 281, 288 (1998), citing Shaw v. State, 104 Nev. 100, 102-03, 753 P.2d 888, 889 (1988).


therefore conclude that appellant failed to demonstrate a fundamental miscarriage of justice sufficient to excuse the procedural bar and that the district court did not err in denying appellant's petition.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Sally L. Loehrer, District Judge
Doris Elie Nehme
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

⁸We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.