

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCIS JAMES JOHNSON A/K/A
FRANCES G. JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38524

FILED

JUL 25 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

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 March 31, 1995, the district court convicted appellant, pursuant to a jury verdict, of burglary while in possession of a deadly weapon and sexual assault with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison and a concurrent term of seven years. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on March 18, 1997.

On June 12, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Johnson v. State, Docket No. 27065 (Order Dismissing Appeal, February 26, 1997).

State opposed the petition. 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 August 29, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than four years after this court issued the remittitur from his direct appeal. 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 first argued that the untimely filing of his petition should be excused because he raised claims of ineffective assistance of counsel. This claim is without merit.⁴ The alleged ineffective assistance of counsel does not explain or excuse appellant's delay in filing the petition.

Second, appellant claimed that the untimely filing of his petition should be excused because evidence existed which proved his innocence. Appellant failed to make a credible claim of actual innocence and failed to demonstrate that failure to consider this claim would result in a fundamental miscarriage of justice.⁵

²See NRS 34.726(1).

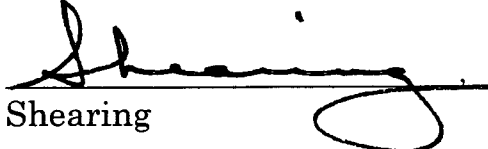
³See id.


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


⁵See Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996).

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Francis James Johnson
Clark County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).