

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACOB FORREST,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38586

**FILED**

FEB 13 2002

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

ORDER OF AFFIRMANCE

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

On May 13, 1998, the district court convicted Forrest, pursuant to a guilty plea, of attempted sexual assault.<sup>1</sup> The district court sentenced appellant to serve a term of 60 to 240 months in the Nevada State Prison, to run consecutive to another sentence in an unrelated case. The district court suspended execution of Forrest's sentence and placed him on probation for a period not to exceed 5 years. An order revoking probation was filed on March 2, 2000. Forrest did not file a direct appeal.

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<sup>1</sup>The judgment of conviction was subsequently amended three times, on October 21, 1998, April 26, 1999, and November 30, 1999.

On April 6, 2001, Forrest filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Forrest filed a reply. The district court then held an evidentiary hearing and denied Forrest's petition on the merits. This appeal followed.

In his petition, Forrest contended that his counsel was ineffective because she may have failed to consider the recanting statement of a witness. Forrest also contended that his guilty plea was unknowingly and involuntarily entered as a result of counsel's alleged ineffectiveness in this regard. Forrest makes these same arguments on appeal.

Our review of the record on appeal reveals that the petition was untimely filed, and thus the petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>2</sup> We conclude that the district court erred in denying Forrest's petition on the merits because the petition was procedurally time-barred. The third amended judgment of conviction was filed November 30, 1999, and Forrest's petition was filed on April 6, 2001, well beyond the one-year time period prescribed by NRS

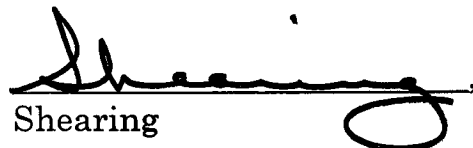
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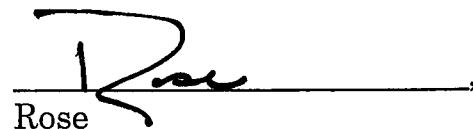
<sup>2</sup>See NRS 34.726(1).

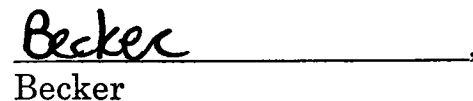
34.726(1).<sup>3</sup> We also note that Forrest made no attempt to demonstrate good cause for his delay in filing the petition.<sup>4</sup>

Nevertheless, we affirm the order of the district court because the district court reached the correct result in denying Forrest's petition.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Shearing

 J.  
Rose

 J.  
Becker

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<sup>3</sup>The district court did not make any finding that Forrest had demonstrated cause to excuse the untimely filing of his petition.

<sup>4</sup>See Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994) (holding that good cause to excuse a procedural default must be some impediment external to the defense which prevented defendant from complying with the procedural rule).

<sup>5</sup>See Hotel Riviera, Inc. v. Torres, 97 Nev. 399, 632 P.2d 1155 (1981).

cc: Hon. Sally L. Loehrer, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Kirk T. Kennedy  
Clark County Clerk