

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUDOIS MONTALVAN A/K/A EUDIOS
MONTALVAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39022

FILED

NOV 06 2002

ORDER OF AFFIRMANCE

JANET H. H. CLARK
CLERK OF SUPREME COURT
BY J. R. Rihank
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 November 23, 1999, the district court convicted appellant, pursuant to a jury verdict, of one count of battery by a prisoner. The district court sentenced appellant to serve a term of thirteen to sixty months in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued on August 22, 2000.


On August 24, 2001, 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 December 14, 2001, the district court denied appellant's petition. This appeal followed.

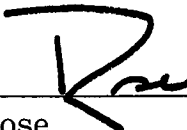
¹Montalvan v. State, Docket No. 35317 (Order Dismissing Appeal, July 27, 2000).

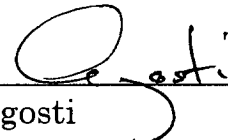
Appellant filed his petition three hundred and sixty-seven days after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed because it was filed two days late.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³ Appellant did not attempt to demonstrate good cause to excuse the delay. Therefore, we affirm the district court's order denying his petition on the ground that the petition was procedurally time 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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Maupin


_____, J.
Rose


_____, J.
Agosti

²See NRS 34.726(1); see also Gonzales v. State, 118 Nev. __, __ P.3d __ (Adv. Op. No. 61, September 13, 2002) (declining to extend the mailbox rule to the filing of habeas corpus petitions and holding that a habeas corpus petition must be filed in the district court within the applicable statutory period).

³See id.

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Eudois Montalvan
Clark County Clerk