

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT J. LEGENDRE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39551

FILED

DEC 19 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
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 September 14, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree kidnapping with the use of a deadly weapon and one count of attempted murder. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole and a consecutive term of sixty to one hundred and ninety-two months. This court affirmed the judgment of conviction.<sup>1</sup> The remittitur issued on November 28, 2000.

On January 15, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed an amended habeas corpus petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary

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<sup>1</sup>Legendre v. State, Docket No. 34214 (Order of Affirmance, October 30, 2000).

hearing. On March 29, 2002, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice.<sup>3</sup>

In an attempt to demonstrate cause for the delay, appellant argued that his appellate counsel failed to inform him that his direct appeal had been resolved. Appellant further claimed that he only received the remittitur from his direct appeal six days prior to the expiration of the one-year time period.

Even assuming without deciding that appellant demonstrated cause for the delay in filing his petition, appellant failed to demonstrate that he would be unduly prejudiced by the dismissal of his petition as untimely because none of the claims raised by appellant would have entitled him to relief.<sup>4</sup> Therefore, we conclude that the district court did not err in finding that appellant's petition was procedurally time-barred.

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


<sup>3</sup>Id.

<sup>4</sup>NRS 34.726(1)(b); see also Hill v. Lockhart, 474 U.S. 52 (1985); Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996); Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999); Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

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.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. Kathy A. Hardcastle, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Robert J. Legendre  
Clark County Clerk

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<sup>5</sup>Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>6</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.