

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK THOMAS MCQUILLEN,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 39668

FILED

JAN 16 2003

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 July 25, 1988, the district court convicted appellant, Patrick Thomas McQuillen, pursuant to a guilty plea, of first degree kidnapping. The district court sentenced McQuillen to serve a term of life in the Nevada State Prison with the possibility of parole. The district court ordered the sentence to run consecutive to any other terms being served by McQuillen at that time. No direct appeal was taken.

On April 22, 2002, McQuillen filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State did not oppose the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent McQuillen or to conduct an evidentiary hearing. On May 6, 2002, the district court denied McQuillen's petition. This appeal followed.

In his petition, McQuillen argued that the criminal information by which he was charged failed to state an offense.¹ In denying the petition, the district court addressed the merits the petition. The district court's order, however, failed to address the procedural time bar pursuant to NRS 34.726(1). We conclude that the district court erred in addressing the merits of McQuillen's petition, but nevertheless we affirm the order denying the petition because it reached the correct result for the reasons discussed below.

NRS 34.726(1) provides that the district court shall dismiss a habeas corpus petition that is untimely filed unless the petitioner demonstrates cause for the delay and undue prejudice. McQuillen filed his petition approximately thirteen years after entry of the judgment of conviction, thus, the petition was untimely.² McQuillen argued that the court should consider his petition because it presented "unique circumstances" and "a Constitutional Test case." This does not constitute sufficient cause to excuse the untimely filing of appellant's habeas corpus


¹McQuillen also argued that he was mentally incompetent, and complained that the district court did not address this claim in denying the petition. Because we conclude that the petition was procedurally barred, the fact that the district court only reached the merits of one claim and not the other is of no consequence under these circumstances.

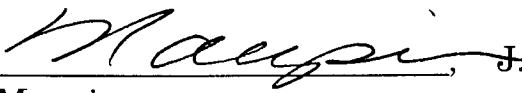
²See NRS 34.726(1).

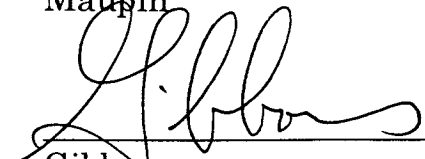
petition.³ Appellant's claim that the district court lacked jurisdiction was without merit, and thus did not excuse the delay.⁴

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

³See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); see also Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

⁴See NRS 200.310(1); NRS 205.320; see generally Conforte v. State, 77 Nev. 269, 362 P.2d 274 (1961).

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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

cc: Hon. William A. Maddox, District Judge
Attorney General/Carson City
Carson City District Attorney
Patrick Thomas McQuillen
Carson City Clerk