

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD CUNDIFF,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39831

FILED

FEB 24 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
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 June 13, 1997, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of forty-seven to one hundred and sixty-eight months in the Nevada State Prison. Appellant did not file a direct appeal.

On May 10, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 June 24, 2002, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition almost five years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.<sup>1</sup> Appellant's petition was procedurally barred absent a demonstration of

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

cause for the delay and undue prejudice.<sup>2</sup> A petitioner must show that an impediment external to the defense prevented compliance with the time requirements.<sup>3</sup> A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.<sup>4</sup>

In an attempt to demonstrate cause for the delay, appellant argued that he was a layperson at law, and he was unable to recognize errors in the trial proceedings until he had a conversation with another inmate. He further claimed that he received ineffective assistance of counsel. Finally, he claimed that a fundamental miscarriage of justice would occur if his claims were not considered because he was actually innocent.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant's petition was procedurally barred and that appellant failed to demonstrate adequate cause to excuse the delay. A petitioner's limited intelligence or poor assistance in framing issues does not overcome the procedural bar.<sup>5</sup> Further, a claim of ineffective assistance of counsel is not good cause if that claim itself is procedurally defaulted.<sup>6</sup> Finally, appellant did not demonstrate that failure to consider his petition would result in a

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<sup>2</sup>See id.

<sup>3</sup>Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>4</sup>Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).


<sup>5</sup>See Phelps v. Director, Prisons, 104 Nev. 656, 764 P. 2d 1303 (1988).


<sup>6</sup>See Edwards v. Carpenter, 529 U.S. 446, 453 (2000).

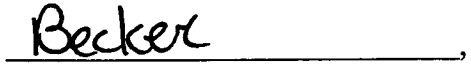
fundamental miscarriage of justice. Therefore, we affirm the order of the district court.

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>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Peter I. Breen, District Judge  
Harold Cundiff  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>8</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.