

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH FRANK CHANCE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40006

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 February 28, 2001, the district court convicted appellant, pursuant to an Alford plea,<sup>1</sup> of one count of robbery and one count of conspiracy to commit first degree kidnapping. The district court sentenced appellant to serve a term of 72 months to 180 months and a concurrent term of 28 months to 72 months in the Nevada State Prison. Appellant did not file a direct appeal.

On March 4, 2002, 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, the district court declined to appoint counsel to represent appellant. The district court conducted a hearing, outside the presence of appellant, on the merits of one of the claims raised in the petition. On June 4, 2002, the district court entered a written order denying appellant's petition on the grounds that

<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

the petition was procedurally time-barred and the claims lacked merit. This appeal followed.

Appellant filed his petition more than one year after entry of the judgment of conviction. 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 prejudice.<sup>3</sup> Appellant did not attempt to demonstrate good cause for the delay. Thus, we conclude that the district court properly determined that appellant's petition was procedurally time-barred.

We note that the district court conducted an ex-parte evidentiary hearing on the merits of one of appellant's claims contrary to this court's recent holding in Gebers v. State.<sup>4</sup> Although the evidentiary hearing conducted by the district court was improper, Gebers is distinguishable because the petition in the instant case was procedurally time-barred. Thus, because the petition was procedurally time-barred, appellant was not prejudiced by the error. We affirm that portion of the district court's order denying appellant's petition on the ground that the petition was procedurally time-barred.

---


<sup>2</sup>See NRS 34.726(1); see also Gonzales v. State, 118 Nev. \_\_, 53 P.3d 901 (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).


<sup>3</sup>See id.

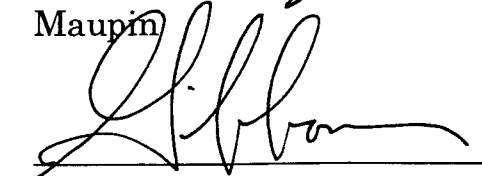
<sup>4</sup>118 Nev. \_\_, 50 P.3d 1092 (2002).

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.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Sally L. Loehrer, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Kenneth Frank Chance  
Clark County Clerk

---

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