

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT FALCONER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40293

FILED

AUG 20 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
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 March 13, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon and one count of assault with a deadly weapon. The district court sentenced appellant to serve consecutive terms totaling seventy-two to three hundred and twelve months in the Nevada State Prison. Appellant did not file a direct appeal.

On June 3, 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 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On September 20, 2002, the district court denied appellant's petition. 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.¹ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.²

In an attempt to demonstrate cause for the delay, appellant alleged that he had entered a program in prison that isolated him from the general population and limited his access to the law library. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse the delay in filing his petition. Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely habeas corpus petition.³ Thus, we affirm the order of the district court.⁴

¹See NRS 34.726(1).

²See id.


³See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

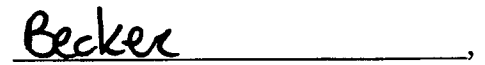
⁴To the extent that appellant argued for modification of his sentence, appellant failed to demonstrate that the sentencing court misapprehended a material fact about the defendant's criminal record that worked to his or her extreme detriment. See Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).

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.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Robert Falconer
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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