

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMON WINKELMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40383

FILED

SEP 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 April 6, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count of battery with the use of a deadly weapon resulting in substantial bodily harm (Count 1) and one count of battery with the use of a deadly weapon (Count 2). The district court sentenced appellant to serve in the Nevada State Prison a term of 60 to 180 months for Count 1 and a concurrent term of 26 to 120 months for Count 2. No direct appeal was taken.

On October 29, 2001, appellant filed a motion for leave to file an untimely habeas corpus petition. Appellant claimed that his attorney had failed to transfer case files and that his family was not able to obtain copies of certain documents from the clerk of the district court. On November 2, 2001, the district court denied appellant's motion.

On August 7, 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 September 27, 2002, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than two years 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 Appellant failed to offer any good cause arguments on the face of the petition. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's motion for extension of time to file an untimely habeas corpus petition.³ Therefore, we affirm the order of the district court.


¹See NRS 34.726(1).


²See id.

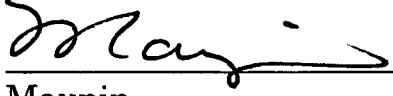
³See Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995) (holding that trial counsel's failure to send a petitioner his files did not prevent the petitioner from filing a timely habeas corpus petition); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

cc: Hon. Steven P. Elliott, District Judge
Damon Winkelman
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).