

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIO MICALIZZI,  
Appellant,  
vs.  
WARDEN, NORTHERN NEVADA  
CORRECTIONAL CENTER, DON  
HELLING,  
Respondent.

No. 41032

**FILED**

**DEC 10 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 Mario Micalizzi's post-conviction petition for a writ of habeas corpus.

On July 17, 2001, the district court convicted Micalizzi, pursuant to a guilty plea, of two counts of burglary. The district court sentenced Micalizzi to serve two consecutive terms of 48 to 120 months in the Nevada State Prison. This court affirmed the district court's judgment of conviction, and the remittitur issued on October 24, 2001.<sup>1</sup>

Thereafter, on October 28, 2002, Micalizzi 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 Micalizzi or to conduct an evidentiary hearing. On February 5, 2003, the district court denied Micalizzi's petition. This appeal followed.

Micalizzi's petition was filed more than one year after this court issued the remittitur from his direct appeal. Thus, Micalizzi's

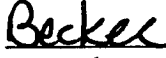
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<sup>1</sup>Micalizzi v. State, Docket No. 38291 (Order of Affirmance, September 28, 2001).

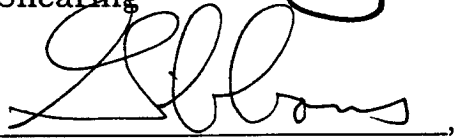
petition was untimely.<sup>2</sup> Micalizzi's petition was procedurally barred absent a demonstration of good cause for the delay and undue prejudice.<sup>3</sup> Micalizzi failed to provide any statement of good cause on the face of the petition.<sup>4</sup> Therefore, we conclude that the district court properly determined that Micalizzi's petition was procedurally barred.<sup>5</sup>

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Micalizzi is not entitled to relief and that briefing and oral argument are unwarranted.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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<sup>2</sup>See NRS 34.726(1) (providing that a petition for a writ of habeas corpus must be filed within one year after this court issues its remittitur).

<sup>3</sup>See *id.*

<sup>4</sup>See NRS 34.735 (requiring the petitioner to state reasons for filing an untimely petition in the petition itself).

<sup>5</sup>*State v. Haberstroh*, 119 Nev. \_\_\_, \_\_\_, 69 P.3d 676, 681 (2003) (recognizing that NRS Chapter 34 requires a petitioner to demonstrate good cause on the face of the petition).

<sup>6</sup>See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. James W. Hardesty, District Judge  
Mario Micalizzi  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk