

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL JOSEPH TIBITOSKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41966

FILED

MAY 28 2004

ORDER OF AFFIRMANCE

JANETTE M. GLOOM
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 April 30, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant to serve a term of sixteen to seventy-two months in the Nevada State Prison. No direct appeal was taken.

On July 14, 2003, 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 August 15, 2003, 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


¹See NRS 34.726(1).


cause for the delay and prejudice.² A petitioner is required to demonstrate good cause on the face of the petition.³


Appellant did not attempt to demonstrate good cause for the delay. Thus, we conclude that the district court did not err in determining that appellant's petition was procedurally time barred.

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.
Becker


_____, J.
Agosti


_____, J.
Gibbons

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

²See id.

³See NRS 34.735 (requiring that a habeas corpus petition substantially comply with the form); State v. Haberstroh, 119 Nev. ___, 69 P.3d 676 (2003) (recognizing that the NRS chapter 34 requires a demonstration of good cause on the face of the petition).

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