

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE ARTEAGA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42308

**FILED**

JUN 25 2004

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. Second Judicial District Court, Washoe County; Steven P. Elliot, Judge.

On January 13, 1999, the district court convicted appellant, pursuant to a jury verdict, of trafficking in a controlled substance. The district court sentenced appellant to serve a term of life in the Nevada State Prison with parole eligibility in ten years. Appellant did not file a direct appeal.

On December 17, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel, and appellant filed a supplemental petition on July 11, 2000. The district court conducted an evidentiary hearing on July 11, 2001, and on August 9, 2001, denied appellant's petition. On June 26, 2002, this court affirmed the district court's denial of appellant's petition.<sup>1</sup>

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<sup>1</sup>Arteaga v. State, Docket No. 38363 (Order of Affirmance, June 26, 2002).

Subsequently, appellant filed a petition for a writ of habeas corpus in the United States District Court of Nevada. On September 29, 2003, the United States District Court denied appellant's petition for failure to exhaust his state court remedies.

Appellant then filed a second petition for a writ of habeas corpus with the district court on October 15, 2003. The district court denied appellant's petition for habeas corpus stating that appellant failed to file his petition within one year of his conviction pursuant to NRS 34.726(1)(a-b). This appeal followed.

Appellant's petition was untimely because it was filed more than three years after the entry of his judgment of conviction.<sup>2</sup> Appellant's petition was also successive because he previously filed a post-conviction petition for writ of habeas corpus in the district court.<sup>3</sup> Thus, appellant's petition was procedurally barred absent a showing of good cause and undue prejudice.<sup>4</sup>

Appellant does not offer any explanation for why he filed a late and successive petition. In fact, appellant indicated in his petition that the requirement to file a petition for habeas corpus within one year of his conviction did not apply in his case. However, appellant failed to explain why he believed he was exempt from this requirement. Pursuit of habeas corpus relief in federal court does not constitute good cause for failing to file a timely petition pursuant to NRS 34.726(1).<sup>5</sup> Thus, we

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<sup>2</sup>See NRS 34.726(1).

<sup>3</sup>See NRS 34.810(2).


<sup>4</sup>See NRS 34.726(1); NRS 34.810(3).


<sup>5</sup>See Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).

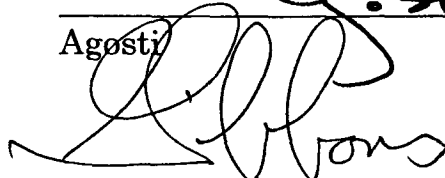
conclude that the district court did not err in denying appellant's petition as procedurally barred.

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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Agosti

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

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

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