

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALOYIOUS JAMES NIESS A/K/A
ALOYSIUS J. NIESS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42849

FILED

AUG 23 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On June 21, 2002, the district court convicted appellant, pursuant to a guilty plea, of attempted theft. The district court sentenced appellant to serve a term of twelve to forty-eight months in the Nevada State Prison. This term was imposed to run consecutively to the sentence imposed in district court case number C173186. No direct appeal was taken.

On August 13, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss 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 December 12, 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 cause for the delay and prejudice.²

In an attempt to demonstrate cause for the delay, appellant argued that the delay was due to ignorance of the law. Appellant also argued that his delay was excused because the Department of Corrections made an error when it entered his sentences in the computer as consecutive sentences.

Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate adequate cause to excuse his delay. Ignorance of the law is not an impediment external to the defense, and thus, it does not constitute good cause.³ To the extent that appellant challenged the computation of time served, the alleged error of the Department of Corrections, we conclude that the district court did not err in denying that portion of the petition. A challenge to the computation of time served may not be raised in a petition challenging the validity of the judgment of conviction and sentence.⁴ Therefore, we affirm the order of the district court denying appellant's petition.

¹See NRS 34.726(1).

²See *id.*

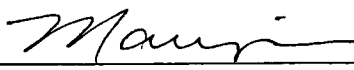
³See *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994); *Phelps v. Director, Prisons*, 104 Nev. 656, 764 P.2d 1303 (1988).

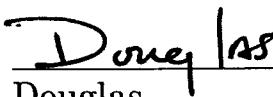
⁴See NRS 34.738(3). Appellant should file any claim challenging the computation of time served in a petition filed in the district court in the county in which he is incarcerated. See NRS 34.738(1).

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.
Rose

 _____, J.
Maupin

 _____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Aloyious James Niess
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).