

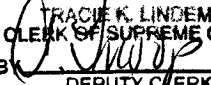
IN THE SUPREME COURT OF THE STATE OF NEVADA

OMAR HERNANDEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54791

**FILED**

DEC 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

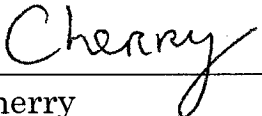
This is an appeal from a district court order denying appellant Omar Hernandez's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

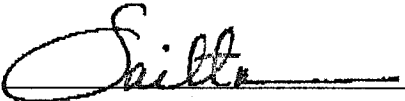
Hernandez contends that the district court erred by denying his untimely petition and finding that (1) he failed to demonstrate good cause and prejudice sufficient to overcome the procedural bars because counsel was ineffective for failing to inform him about and pursue a direct appeal, and he filed his proper person petition "within a reasonable time" after discovering that counsel did not; and (2) his guilty plea was entered knowingly, intelligently, and voluntarily.

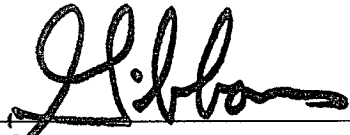
In its order denying Hernandez's petition, the district court noted that it was untimely, see NRS 34.726(1), and found that Hernandez had not overcome the presumption that the delay of more than five years prejudiced the State, NRS 34.800(2). The district court also found that Hernandez failed to demonstrate that his appeal-deprivation claim was not reasonably available for him to raise in a timely manner. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). The district court's factual findings are entitled to deference when reviewed on appeal. See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Here, the district court's findings of fact are supported by substantial evidence and are not clearly wrong, and Hernandez has not demonstrated that the district court erred as a matter of law. Because we affirm the denial of Hernandez's petition as procedurally barred, we need not address his challenge to the validity of his plea and we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
Cherry, J.

  
Saitta, J.

  
Gibbons, J.

cc: Hon. Doug Smith, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Law Office of Jeannie N. Hua, Inc.  
Eighth District Court Clerk

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<sup>1</sup>Although we filed the fast track statement submitted by Hernandez, it fails to comply with the Nevada Rules of Appellate Procedure. The fast track statement is single-spaced, see NRAP 32(a)(4), and the procedural history and legal argument sections refer to matters in the record without specific citation to the appendix, see NRAP 3C(e)(1)(C); NRAP 28(e). We also note that the only two citations provided in the statement of facts section are inaccurate. Counsel for Hernandez is cautioned that the failure to comply with the briefing requirements may result in the fast track statement being returned, unfiled, to be correctly prepared, NRAP 32(e), and in the imposition of sanctions, NRAP 3C(n).