

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW E. CHAMBERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60269

FILED

OCT 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [Signature]
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.¹ Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Appellant filed his petition on July 14, 2011, more than one year after this court's July 8, 2010, issuance of the remittitur from his direct appeal. See Chambers v. State, Docket No. 52688 (Order of Affirmance, February 3, 2010). Appellant's petition was therefore untimely filed and, accordingly, was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See NRS 34.726(1).

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

Appellant first argued that his petition was not untimely because it was filed within one year of the district court's filing of the remittitur from direct appeal. Appellant's argument was without merit. The one-year time limit is measured from this court's issuance of the remittitur on direct appeal, not the district court's filing of the remittitur. Gonzales v. State, 118 Nev. 590, 593, 53 P.3d 901, 902 (2002). Even had the petition been successfully filed on July 13, 2011, as alleged below, it would still have been untimely.

Appellant next argued that he had good cause to excuse the procedural defect because any fault would be on the part of counsel, who filed the petition after the one year time limit. Any error by counsel was not external to the defense and thus could not demonstrate good cause. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Moreover, even if an error by post-conviction counsel could constitute good cause, appellant did not argue or demonstrate that he would suffer undue prejudice.

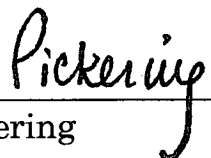
Finally, appellant argued that his procedural defect should be excused because he is actually innocent such that denying consideration of his substantive claims would result in a fundamental miscarriage of justice. Appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

We therefore conclude that the district court did not err in denying appellant's petition.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Valorie J. Vega, District Judge
Andrew E. Chambers
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.