

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK HARVEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64566

FILED

APR 10 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from the district court's denial of a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant filed his petition on August 7, 2013, twenty-nine years after issuance of the remittitur on direct appeal on July 17, 1984.² *Harvey v. State*, 100 Nev. 340, 682 P.2d 1384 (1984). Thus, appellant's petition was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See NRS 34.726(1).

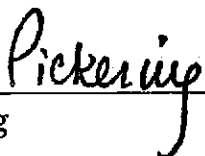
Appellant claimed that he has good cause based on *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012), which held that juveniles that are convicted of homicide cannot receive a mandatory life-without-

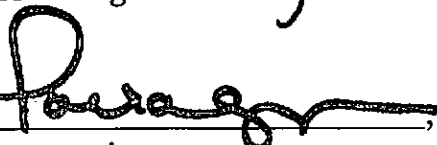
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).


²Further, the petition was filed more than twenty years after the effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 33, at 92.

the-possibility-of-parole sentence. Instead, the sentencing body must have discretion. *Id.* at ___, 132 S. Ct. at 2475. Appellant filed his petition nearly fourteen months after *Miller* was decided on June 25, 2012, and appellant failed to demonstrate good cause for the entire length of the delay. We also note that *Miller* does not apply to appellant's case. The jury had discretion to sentence appellant to death, life without the possibility of parole, and life with the possibility of parole after ten years. 1977 Nev. Stat., ch. 585, § 1, at 1542. The fact that this court changed his sentence on direct appeal per 1977 Nev. Stat., ch. 585, § 10, at 1545, does not implicate *Miller*. Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Michelle Leavitt, District Judge
Frederick Harvey
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk