

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH J. SCHIRO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38180

FILED

JUN 28 2002

ORDER OF AFFIRMANCE

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.

On July 27, 1998, the district court convicted appellant, pursuant to a jury verdict, of three counts of sexual assault of a minor under the age of fourteen years. The district court sentenced appellant to serve two consecutive life terms in the Nevada State Prison with the possibility of parole for the first and second counts and one concurrent sentence of life with the possibility of parole for the third count. This court dismissed appellant's direct appeal.<sup>1</sup> The remittitur issued on March 28, 2000.

On April 19, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed an answer to the State's opposition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an

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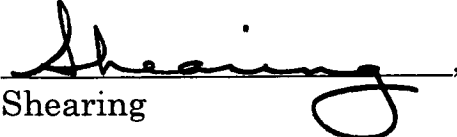
<sup>1</sup>Schiro v. State, Docket No. 32590 (Order Dismissing Appeal, March 2, 2000).


evidentiary hearing. On July 3, 2001, the district court denied appellant's petition. This appeal followed.

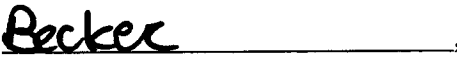
Appellant filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>3</sup> Appellant did not attempt to demonstrate cause for the delay. Therefore, we conclude that the district court did not err in denying appellant's petition.

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>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

 \_\_\_\_\_, J.  
Shearing

 \_\_\_\_\_, J.  
Rose

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

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<sup>2</sup>See NRS 34.726(1); see also Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (holding that the one year period for filing a timely petition "begins to run from the issuance of the remittitur from a timely direct appeal to this court from the judgment of conviction").

<sup>3</sup>See id.

<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>5</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Jack Lehman, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Kenneth J. Schiro  
Clark County Clerk