

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVERARDO MEDINA-AGUILA,

No. 38337

Appellant,

vs.

WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,

Respondent.

FILED

OCT 11 2001

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Appellant was originally convicted, pursuant to a guilty plea, of one count of trafficking in an controlled substance. The district court sentenced appellant to a prison term of 25 years and ordered appellant to pay a fine of \$2,000.00. The sole issue raised by appellant in his direct appeal was a challenge to the validity of his guilty plea. This court therefore dismissed his appeal, noting that such a claim must be first raised in the district court.¹

This court issued remittitur on May 13, 1997. Appellant filed his proper person post-conviction petition for a writ of habeas corpus on May 23, 2000. The district court appointed counsel to represent appellant, and counsel filed a supplement to the petition. The State filed a motion to dismiss the petition as being untimely. Counsel for appellant opposed the motion. The district court granted the motion and dismissed the petition.

Appellant filed his petition approximately 3 years after remittitur issued. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of

¹Medina-Aguila v. State, Docket No. 29308 (Order Dismissing Appeal, April 22, 1997).


²See NRS 34.726(1).

good cause for the delay and prejudice.³ In an attempt to demonstrate cause for the delay, appellant argues that he does not speak English.

We conclude that appellant failed to demonstrate that "some impediment external to the defense" was the cause for the delay in filing his petition.⁴ Therefore, we conclude that appellant has not demonstrated good cause sufficient to overcome the procedural bar and that the district court did not err in dismissing his petition. Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Calvert & Wilson
Washoe County Clerk

³See *id.*

⁴See *Harris v. Warden*, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998); see also *Hood v. State*, 111 Nev. 335, 890 P.2d 797 (1995); *Phelps v. Director, Prisons*, 104 Nev. 656, 764 P.2d 1303 (1988).