

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY
MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57197

FILED

MAY 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingerson*
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; Donald M. Mosley, Judge.

Appellant filed his petition on April 30, 2010, almost two years after issuance of the remittitur on direct appeal on June 3, 2008. Martinez v. State, Docket No. 49608 (Order of Affirmance, May 7, 2008). Thus, appellant's petition was untimely filed. NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. Id. In documents submitted after the filing of his petition, appellant appeared to claim that he had cause due to a language barrier and because he was not informed of the resolution of his direct appeal. We conclude that the district court did not err in denying

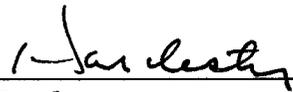
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

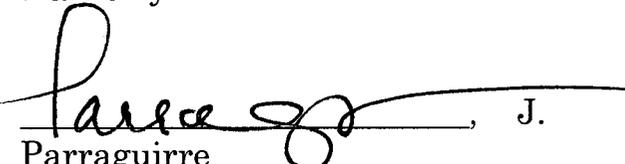
the petition as procedurally barred as appellant failed to demonstrate that an impediment external to the defense excused his procedural defects. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).²

Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

²To the extent that appellant claimed that he was innocent, 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).

³We 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.

cc: Hon. Donald M. Mosley, District Judge
Fredys A. Martinez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk