

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUDOLPH H. COOLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43569

FILED

NOV 29 2004

ORDER OF AFFIRMANCE

JANEITE M. GLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On January 15, 2002, the district court convicted appellant, pursuant to a guilty plea, of two counts of attempted sexual assault. The district court sentenced appellant to serve concurrent terms of three to eight years in the Nevada State Prison. The district court also imposed a special sentence of lifetime supervision to commence upon appellant's release from any term of probation, parole or imprisonment. No direct appeal was taken.

On March 25, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss the petition. Appellant filed a response. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On July 12, 2004, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than two years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.²

In his petition, appellant raised several claims relating to the special sentence of lifetime supervision and the loss of a direct appeal. In an attempt to demonstrate good cause for the delay, appellant argued that the time for filing a petition had not begun because the special sentence of lifetime supervision had not yet started and he did not know in advance that the Department of Parole and Probation would apply lifetime supervision punitively. Appellant further claimed that he was never informed of post-conviction remedies and that this court's recent decision in Palmer v. State excused his delay.³ Finally, appellant appeared to claim that his sentence was illegal because of the inclusion of the special sentence of lifetime supervision.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition. Appellant failed to demonstrate that his challenge to lifetime supervision and his appeal deprivation claim could not have been raised within the

¹See NRS 34.726(1).

²See id.

³118 Nev. 823, 59 P.3d 1192 (2002).

one year time period.⁴ Appellant's argument relating to the one-year time period is patently without merit; the period for filing a habeas corpus petition expires, absent a demonstration of good cause, one year after entry of the judgment of conviction or the issuance of the remittitur from a timely direct appeal.⁵ Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.⁶ The facts presented in Palmer are distinguishable from those presented in the instant case, and thus, the holding in Palmer is inapposite and does not excuse appellant's delay. There is no requirement in Palmer that a criminal defendant be informed of the precise conditions of lifetime supervision—only that the criminal defendant be informed of lifetime supervision. The record reveals that appellant was informed of the special sentence of lifetime supervision in the written guilty plea agreement. Finally, appellant's sentence is not illegal as imposition of a special sentence of lifetime supervision is mandatory in a case involving the offense of attempted sexual assault.⁷

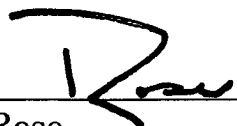
⁴Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

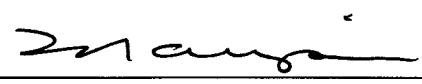
⁵See NRS 34.726(1); Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998).


⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁷See NRS 176.0931(1).

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.⁸ Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Nancy M. Saitta, District Judge
Rudolph H. Cooley
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).