IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN LEE MICHAEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43702

FILED

DEC 13 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On November 6, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of fourteen. The district court sentenced appellant to serve a term of twenty-four to seventy-two months 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 February 12, 2004, 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 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 9, 2004, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than one year 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 challenging the special sentence of lifetime supervision, the loss of a direct appeal, and the collection of a DNA sample. 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 claimed that he was never informed of post-conviction remedies. He further claimed that his delay was excused by this court's recent decision in Palmer v. State[3] and the recent decision of the Ninth Circuit Court of Appeals in United States v. Kincade.[4] 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 lifetime supervision and appeal

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[1]See NRS 34.726(1).

[2]See id.

[3]118 Nev. 823, 59 P.3d 1192 (2002) (holding that lifetime supervision is a direct consequence of the guilty plea, and consequently, a defendant must be advised of the special sentence of lifetime supervision).

[4]379 F.3d 813 (9th Cir. 2004).

deprivation claims could not have been raised within the one year time period.[5] Palmer was decided in December 2002, yet appellant waited approximately fourteen months to file his petition. Appellant failed to demonstrate that this delay was reasonable. 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.[6] Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.[7] The holding in Kincade offers no relief.[8] 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 lewdness on a child under the age of fourteen years.[9]

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

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

[7]See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); see also Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

[8]Appellant claimed that Kincade held that forced DNA collection from parolees pursuant to a federal act violated the Fourth Amendment rights of the parolees. However on rehearing, a majority of the en banc panel of the Ninth Circuit held that compulsory DNA profiling of qualified federal offenders was reasonable and did not violate the Fourth Amendment. 379 F.3d at 839-40 (O'Scannlain, J., Schroeder, C.J., Silverman, J., Clifton, J., Callahan, J.) and (Gould, J., concurring).

[9]See 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.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[11]

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Valorie Vega, District Judge
John Lee Michael
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[10]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[11]We 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.