

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN A. KELLY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43806

**FILED**

OCT 21 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

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

On March 27, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted aggravated stalking. The district court sentenced appellant to serve a term of forty-eight to one hundred and twenty months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period not to exceed five years. On August 28, 2003, the district court entered an order revoking appellant's probation and executing the original sentence.<sup>1</sup> No direct appeal was taken.

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<sup>1</sup>On February 11, 2003, the district court entered an amended judgment of conviction. It appears that this judgment was entered in order to reinstate appellant to probation after probation violation proceedings.

On April 27, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 August 23, 2004, the district court denied 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.<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 good cause for the delay.<sup>4</sup> Therefore, we conclude that the district court did not err in denying appellant's petition as procedurally time-barred.

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<sup>2</sup>See NRS 34.726(1).

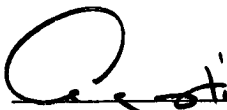
<sup>3</sup>See id.


<sup>4</sup>We note that entry of the amended judgment of conviction did not provide good cause for appellant's failure to file a timely petition challenging the judgment of conviction. See Sullivan v. State, 120 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Op. No. 61, September 3, 2004). Appellant's claims could have been raised within one year of the original judgment of conviction. See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

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>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

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

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Donald M. Mosley, District Judge  
Kevin A. Kelly  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>6</sup>We have received appellant's motion for leave to file an opening brief. No good cause appearing, we deny appellant's motion. See NRAP 46(b).