

IN THE SUPREME COURT OF THE STATE OF NEVADA

DRAYDEN DOUGLAS SHUMPERT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43859

FILED

FEB 15 2005

ORDER OF AFFIRMANCE

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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; Joseph T. Bonaventure, Judge.

On December 11, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery and one count of attempted murder. The district court sentenced appellant to serve two consecutive terms of seventy-two to one hundred and eighty 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. No direct appeal was taken from the judgment of conviction.

On December 17, 2003, the district court entered an amended judgment of conviction in which it revoked appellant's probation. The district court further modified appellant's sentence and imposed two concurrent terms of sixty to one hundred and eighty months in the Nevada State Prison. No appeal was taken from this judgment.

On April 28, 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, the district court declined to appoint counsel to represent appellant. The district court

conducted an evidentiary hearing on one issue raised by appellant, and on August 19, 2004, the district court denied appellant's petition on the merits. This appeal followed.

The district court denied the petition on the merits. However, appellant's petition was untimely filed. Appellant filed his petition approximately one and one-half years after entry of the original judgment of conviction on December 11, 2002. 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 response to the Question No. 19 on the form petition, relating to the timeliness of the petition and good cause for the delay, appellant offered the following explanation for his delay: "[Appellant] previously appeared before the court with counsel and entered a plea of guilty to the crime(s) of count 7 and couldn't exceed without criminal court minutes." This nonsensical statement does not explain the delay for the filing of the petition.

It appears that the district court believed that the amended judgment of conviction excused appellant's delay in filing his petition. However, this court has recently held that "untimely post-conviction claims that arise out of the proceedings involving the initial conviction . . . and that could have been raised before the judgment of conviction was amended are procedurally barred."³ Appellant's claims did not challenge the probation revocation proceedings or modification of the sentence as set

¹See NRS 34.726(1).


²See *id.*

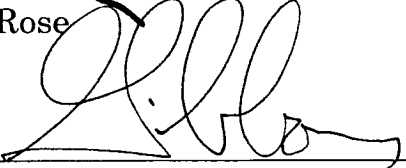
³See *Sullivan v. State*, 120 Nev. ___, ___, 96 P.3d 761, 764 (2004).


forth in the amended judgment of conviction. Thus, the amended judgment of conviction does not provide good cause for the untimely filing of his petition. Appellant failed to otherwise demonstrate good cause for the delay.⁴ The district court reached the correct result in denying appellant's petition, and therefore, we affirm the decision of the district court to deny post-conviction relief.⁵

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁴See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

⁵See generally Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Joseph T. Bonaventure, District Judge
Drayden Douglas Shumpert
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk