

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK HALLEY HEIMRICH,  
Appellant,  
vs.  
WARDEN, CHERIE SCOTT,  
Respondent.

No. 43941

FILED

JAN 25 2005

ORDER OF AFFIRMANCE

JANETTE M BLOOM  
CLERK OF SUPREME COURT  
BY *J. Ruben*  
CHIEF DEPUTY CLERK

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. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On October 24, 1979, the district court convicted appellant, pursuant to a guilty plea, of first degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison without the possibility of parole. This court affirmed appellant's judgment of conviction on appeal.<sup>1</sup> The remittitur issued August 11, 1981. Heimrich unsuccessfully sought relief from his conviction in a motion to correct an illegal sentence and a post-conviction petition for a writ of habeas corpus.<sup>2</sup>

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<sup>1</sup>Heimrich v. State, 97 Nev. 358, 630 P.2d 1224 (1981).

<sup>2</sup>See Heimrich v. State, Docket No. 35282 (Order of Affirmance, March 15, 2001); Heimrich v. State, Docket No. 27043 (Order Dismissing Appeal, March 30, 1998). Heimrich also sought relief in a motion to withdraw a guilty plea. Heimrich's appeal from the order denying his motion to withdraw a guilty plea was untimely filed, and this court dismissed his appeal for lack of jurisdiction. Heimrich v. State, Docket No. 21553 (Order Dismissing Appeal, October 24, 1990).

On August 23, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 24, 2004, the district court denied appellant's petition. This appeal followed.

In his petition, appellant challenged the validity of his judgment of conviction.<sup>3</sup> Appellant filed his petition more than twenty-three years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>4</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>5</sup>

In an attempt to demonstrate cause for the delay, appellant argued that the 1979 judgment of conviction was nullified by a new judgment of conviction entered on behalf of his co-defendant, Russell Yeager, in 1989 in the same criminal case.<sup>6</sup> Appellant claimed that he could not raise this issue earlier as he was never informed about the 1989 judgment of conviction. Appellant claimed that he has not had a valid judgment of conviction since 1989, and he sought immediate release from prison.

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<sup>3</sup>Contrary to appellant's argument, his petition did not challenge the computation of time served. See NRS 34.724(2)(c).

<sup>4</sup>See NRS 34.726(1).

<sup>5</sup>See id.

<sup>6</sup>The district court entered one judgment of conviction in 1979 for appellant and his two co-defendants.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant's petition was procedurally time barred. Appellant failed to demonstrate good cause to excuse the delay.<sup>7</sup> The 1989 judgment of conviction did not nullify the 1979 judgment of conviction in its entirety; rather, it modified and took the place of the 1979 judgment of conviction as it related to Yeager. The 1989 judgment of conviction did not invalidate or modify appellant's judgment of conviction. The State was not required to serve a copy of Yeager's 1989 judgment of conviction upon appellant, and thus, this claim cannot excuse his twenty-three year delay in filing his petition. Therefore, we affirm the order of the district court.

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>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, C.J.  
Becker

Rose, J.  
Rose

Hardesty, J.  
Hardesty

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<sup>7</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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

cc: Hon. John P. Davis, District Judge  
Frederick Halley Heimrich  
Attorney General Brian Sandoval/Carson City  
Nye County District Attorney/Tonopah  
Nye County Clerk