

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD R. WISNIES, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44037

FILED

MAR 22 2005

ORDER OF AFFIRMANCE

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

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

On September 19, 2002, the district court convicted Wisnies, pursuant to a guilty plea, of possession of an incendiary device. The district court sentenced Wisnies to serve a term of nineteen to forty-eight months in the Nevada State Prison. The district court suspended Wisnies' sentence and placed him on probation for a period not to exceed three years. Wisnies did not appeal.

On September 12, 2003, the district court entered an order revoking Wisnies' probation, executing the original sentence and amending the judgment of conviction to include 45 days' credit.<sup>1</sup>

---

<sup>1</sup>On December 1, 2003, the district court entered a second amended judgment of conviction, which granted Wisnies 138 days' credit.

On June 18, 2004, Wisnies filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Wisnies filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Wisnies or to conduct an evidentiary hearing. On September 21, 2004, the district court dismissed Wisnies' petition. This appeal followed.

In his petition, Wisnies claimed that his trial counsel was ineffective for failing to inform the district court at sentencing that Wisnies was unable to work due to a disability, and that his trial counsel or probation officer should have requested that the district court remove the probation requirement that Wisnies seek and maintain full-time employment. Wisnies additionally appeared to argue that his counsel was at fault for Wisnies' loss of supplemental security income (SSI).

Wisnies filed his petition nearly two years after entry of the original judgment of conviction. Thus, Wisnies' petition was untimely filed.<sup>2</sup> This court 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."<sup>3</sup> Because the above claims do not challenge Wisnies' probation revocation proceeding or amended judgments of conviction, they

---

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

<sup>3</sup>Sullivan v. State, 120 Nev. \_\_\_, \_\_\_, 96 P.3d 761, 764 (2004).

are procedurally barred absent a demonstration of good cause for the delay and prejudice.<sup>4</sup>

In an attempt to demonstrate good cause, Wisnies argued that his counsel and probation officer told him that he did not have the right to appeal. However, counsel's alleged misinformation concerning Wisnies' right to appeal does not constitute good cause to excuse the untimely filing of the instant petition.<sup>5</sup> Wisnies failed to otherwise demonstrate good cause,<sup>6</sup> and the district court did not err in denying him relief on these claims.

Wisnies also claimed that his counsel appointed to represent him at his probation revocation proceeding was ineffective.<sup>7</sup> To state a claim of ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.<sup>8</sup> A petitioner must further establish a reasonable probability that, in the absence of counsel's errors, the results of the

---

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

<sup>5</sup>See Harris v. Warden, 114 Nev. 956, 960, 964 P.2d 785, 788 (1998).

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

<sup>7</sup>See Gagnon v. Scarpelli, 411 U.S. 778 (1973).

<sup>8</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

proceedings would have been different.<sup>9</sup> The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.<sup>10</sup>

First, Wisnies contended that his counsel was ineffective because she was not familiar with his case and refused to present the district court with a letter Wisnies had written. We conclude that the district did not err in denying these claims. Wisnies failed to provide sufficient facts to support these assertions, or articulate how he was prejudiced by his counsel's actions.<sup>11</sup> Therefore, Wisnies did not demonstrate that his counsel was ineffective.

Second, Wisnies claimed that his counsel was ineffective for failing to adequately inform the district court that he was denied SSI because he maintained full-time employment in accordance with conditions of probation. Wisnies further asserted that the federal government was pursuing criminal charges against him because he was employed while receiving SSI. We conclude that these claims are similarly without merit. A review of the record reveals that Wisnies' probation was revoked because he failed to attend impulse control classes, report to his probation officer, and perform community service. Wisnies' employment status was not a ground for probation revocation. Therefore, Wisnies did not establish that the outcome of his probation revocation

---

<sup>9</sup>Id.


<sup>10</sup>Strickland, 466 U.S. at 697.

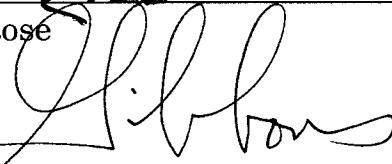
<sup>11</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

hearing would have been different if his counsel had provided this information to the district court. We further note that this court does not have jurisdiction to address challenges to any pending federal criminal charges.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Wisnies is not entitled to relief and that briefing and oral argument are unwarranted.<sup>12</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

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

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Donald M. Mosley, District Judge  
Edward R. Wisnies Jr.  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

---

<sup>12</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).