

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN LANCASTER KEALOHA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44216

FILED

JAN 20 2005

ORDER OF AFFIRMANCE

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

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

On April 9, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted battery with substantial bodily harm. The district court sentenced appellant to serve a term of eighteen to forty-eight months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period not to exceed three years. No appeal was taken.

On October 1, 2003, the district court entered an order revoking appellant's probation, executing the original sentence and amending the judgment of conviction to include 121 days of presentence credits. No appeal was taken.

On July 6, 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 September 27, 2004, the district court dismissed 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 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: "filing petition following revocation hearing on September 25, 2003 w/ no counsel present." It appears that appellant believed that his petition was timely because he filed the petition within one year from entry of the order revoking his probation, executing the original sentence and amending the judgment of conviction to include credits. 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 the amendment to the judgment of conviction. Thus, the amended judgment of conviction does not provide good cause for the untimely filing of his petition. Because appellant failed to otherwise demonstrate good cause for the delay, we conclude that the district court

¹See NRS 34.726(1).


²See id.


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

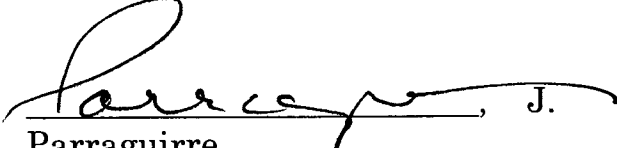
did not err in determining that appellant's petition was procedurally time barred.

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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Dean Lancaster Kealoha
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).