

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMIAN DEONN ALLEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44227

**FILED**

JUN 08 2005

ORDER OF AFFIRMANCE

FINLEY C. ALLIANCE  
CLERK OF SUPREME COURT  
*[Signature]*  
DEPUTY CLERK

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On September 20, 2002, appellant Damian Deonn Allen was convicted, pursuant to a nolo contendere plea, of attempted murder with the use of a deadly weapon (count I) and attempted robbery with the use of a deadly weapon (count II).<sup>1</sup> The district court sentenced Allen to serve two consecutive prison terms of 32 to 144 months for count I and two consecutive prison terms of 32 to 144 months for count II, to run concurrently to count I. Allen did not file a direct appeal.

On October 13, 2003, Allen filed a post-conviction motion to withdraw the nolo contendere plea. The State opposed the motion. After

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<sup>1</sup>The criminal charges arose when Allen and his co-defendant entered the first victim's residence and took her personal property at gunpoint. Upon exiting the residence, Allen fired several shots at the second victim, the first victim's neighbor, missing her by a matter of inches. In exchange for the nolo contendere plea, the State dropped numerous criminal charges, including several counts of conspiracy, home invasion, possession of a stolen vehicle, and possession of a controlled substance with the intent to sell.

conducting a hearing, the district court denied the motion on February 11, 2004.

On July 12, 2004, Allen, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus. The State filed a motion to dismiss the petition, arguing that it was untimely and procedurally barred. Allen filed a reply to the State's motion to dismiss. Without conducting an evidentiary hearing, the district court denied the motion. Allen filed this timely appeal.

Allen's petition was filed approximately 22 months after entry of the judgment of conviction. Thus, Allen's petition was untimely.<sup>2</sup> Allen's petition was procedurally barred absent a demonstration of good cause for the delay.<sup>3</sup> Allen argues that the district court erred in determining he failed to demonstrate good cause to excuse the untimely filing of his petition. Specifically, he argues his delay should be excused because he never received notice of entry of the judgment of conviction, and it is unfair and violates his right to due process that the "one-year clock starts ticking and the 'race' begins without a defendant ever hearing the starter's pistol." We conclude that Allen's contention lacks merit.

There is no Nevada statute or rule requiring notice of entry of a judgment of conviction in a criminal case. Although there is a statute requiring notice of entry of an order denying a post-conviction petition, that statute does not stand for the proposition that the time for filing a

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<sup>2</sup>See NRS 34.726(1) (providing that a petition for writ of habeas corpus must be filed within one year after entry of judgment of conviction, if no direct appeal was taken).

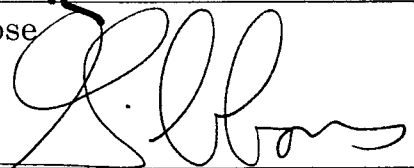
<sup>3</sup>See *id.*

post-conviction petition depends in any way on notice of entry of the judgment of conviction.<sup>4</sup> Instead, NRS 34.726(1) provides that where a defendant does not pursue a direct appeal, a post-conviction petition must be filed within one year after entry of the judgment of conviction. NRS 34.726(1) does not mention a notice of entry of the judgment of conviction. We decline to require a notice that is not provided for by statute or rule. We therefore conclude that this allegation does not constitute good cause to excuse Allen's delay in filing his petition. Accordingly, the district court did not err in denying the petition as untimely and procedurally barred.

Having considered Allen's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. John S. McGroarty, District Judge  
Kirk T. Kennedy  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

<sup>4</sup>See NRS 34.830(2)-(3).