

IN THE SUPREME COURT OF THE STATE OF NEVADA

VERDELL ROBINSON, JR.,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
MICHAEL BUDGE,
Respondent.

No. 44492

FILED

APR 20 2006

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Mineral County; Robert W. Lane, Judge.

Appellant Verdell Robinson was originally convicted, pursuant to a jury verdict, of one count of trafficking in a controlled substance, one count of possession of a controlled substance and two counts of unlawful use of a controlled substance. On direct appeal, Robinson challenged the validity of the search warrant. Specifically, Robinson argued that the warrant was defective because it provided that it could be served any time day or night without stating on its face the reason for the night-time service provision. This court rejected Robinson's argument and ordered the judgment of conviction affirmed but remanded the matter to the district court to correct an error in the sentence.¹

The district court resentenced Robinson and entered an amended judgment of conviction on May 24, 2004. No appeal was taken from the amended judgment of conviction.

¹Robinson v. State, Docket No. 38222 (Order Affirming in Part and Remanding in Part, March 12, 2002).

On May 24, 2004, Robinson filed a proper person petition for a writ of habeas corpus. The State filed a response on October 18, 2004. Without conducting an evidentiary hearing, the district court denied the petition on November 19, 2004. Robinson filed a timely notice of appeal from the district court's order.

The district court denied the petition on the merits. However, Robinson's petition was untimely filed. Robinson filed his petition approximately two years after the remittitur issued in his direct appeal. Thus, Robinson's petition was untimely filed.² Robinson's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³

It appears that the district court believed that the amended judgment of conviction excused Robinson's delay in filing his petition. However, this court has 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."⁴ Robinson's claims did not challenge the re-sentencing proceedings or modification of the sentence as set 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. Robinson failed to otherwise demonstrate good cause for the delay.⁵ The district court reached the correct result in denying Robinson's

²See NRS 34.726(1).

³See *id.*

⁴See *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

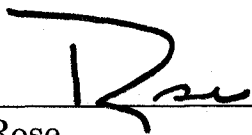
⁵See *Harris v. Warden*, 114 Nev. 956, 964 P.2d 785 (1998).

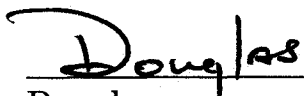
petition, and therefore, we affirm the decision of the district court to deny post-conviction relief.⁶

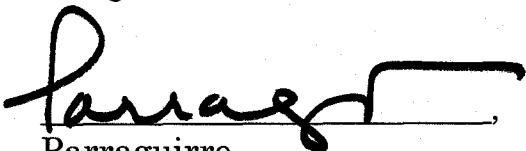
Moreover, we conclude that even if the petition had been timely filed, the district court was not required to conduct an evidentiary hearing, because the claims raised were either not pleaded with sufficient specificity, were not properly raised in a post-conviction habeas petition, or were barred by the doctrine of the law of the case.⁷

Having considered appellant's arguments and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Rose


_____, J.
Douglas


_____, J.
Parraguirre

⁶See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court will affirm judgment of district court if it reached the correct result for the wrong reason).

⁷See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that in order to be entitled to an evidentiary hearing, appellant must allege specific facts which, if true, would entitle him to relief); Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

cc: Hon. Robert W. Lane, District Judge
Law Offices of Robert Witek
Attorney General George Chanos/Carson City
Mineral County District Attorney
Mineral County Clerk