

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANUBOR JOMO BAGBI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44697

FILED

JUL 21 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 denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On April 1, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted burglary. The district court sentenced appellant to serve a term of twenty-four to sixty months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period not to exceed five years. No direct appeal was taken. On February 10, 2004, the district court revoked appellant's probation and amended the judgment of conviction to include jail time credit.

On December 16, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant also filed a motion for the appointment of counsel and a motion for an evidentiary hearing. The State filed a motion to dismiss 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 March 7, 2005, the district court denied appellant's petition. This appeal followed.¹

In his petition, appellant raised a number of claims challenging the validity of his 1999 judgment of conviction. Appellant filed his petition more than five and one-half years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³

Appellant did not attempt to demonstrate good cause for his delay on the face of the petition. It appears that appellant believed that his petition was timely because the petition was filed within one year from entry of the order revoking his probation 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."⁴ The claims raised in the petition did not challenge the probation revocation

¹We conclude that the district court did not abuse its discretion in declining to appoint counsel or declining to conduct an evidentiary hearing in this matter. It appears that appellant attempted to supplement his petition on February 9, 2005. These documents were filed after the district court orally denied appellant's petition and did not amount to a response to the State's motion to dismiss as contemplated by NRS 34.750(4) as they did not even refer to the State's motion to dismiss the petition. Therefore, this court declines to consider these documents.

²See NRS 34.726(1).


³See id.

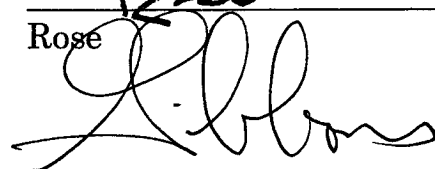
⁴See Sullivan v. State, 120 Nev. ___, ___, 96 P.3d 761, 764 (2004).

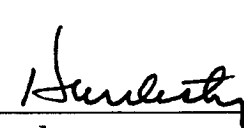
proceedings or the amendment to the judgment of conviction. Thus, the amended judgment of conviction does not provide good cause for the untimely filing of a petition challenging the validity of the 1999 judgment of conviction. To the extent that appellant may have argued that his delay should be excused because his trial counsel failed to file a direct appeal on his behalf from the original judgment of conviction, appellant failed to demonstrate good cause for his failure to raise this claim in a timely petition.⁵ Therefore, we affirm the district court's order denying the petition as procedurally 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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁵See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Michelle Leavitt, District Judge
Anubor Jomo Bagbi
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk