

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONTA KARL RATCLIFF,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45531

**FILED**

APR 07 2006

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court dismissing appellant Donta Karl Ratcliff's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Ratcliff was charged by way of an amended criminal indictment with one count each of attempted sexual assault, first-degree kidnapping, conspiracy to commit sexual assault, battery with the intent to commit sexual assault, battery with the intent to commit robbery, robbery, and possession of stolen property, and two counts of sexual assault. On August 23, 2001, Ratcliff was convicted, pursuant to a guilty plea, of one count of attempted sexual assault. The district court sentenced Ratcliff to serve a prison term of 80-200 months and ordered him to pay \$2,968.98 in restitution jointly and severally with his three codefendants. This court dismissed Ratcliff's untimely direct appeal due to a lack of jurisdiction.<sup>1</sup>

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<sup>1</sup>Ratcliff v. State, Docket No. 39889 (Order Dismissing Appeal, July 29, 2002).

On September 2, 2003, Ratcliff filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Ratcliff, and counsel filed a supplement to the petition. The State filed a motion to dismiss based on the untimeliness of Ratcliff's petition. In his opposition to the State's motion filed on April 18, 2005, and for the very first time, Ratcliff argued that his petition should instead be construed as a motion to withdraw his guilty plea, and that such a motion is not time-barred. Substantively, Ratcliff's argument is "based upon the Palmer principle that [he] was not informed of the lifetime supervision requirement at the time of entering his guilty plea."<sup>2</sup> In its reply to Ratcliff's opposition, the State argued, among other things, that (1) if the petition were treated as a motion, it should be denied based on the equitable doctrine of laches,<sup>3</sup> and (2) Palmer should not be retroactively applied. The district court declined to conduct an evidentiary hearing or treat the petition as a motion to withdraw, and on June 13, 2005, entered an order dismissing Ratcliff's petition. The district court found that (1) Ratcliff's petition was procedurally barred due to its untimeliness, (2) Ratcliff's guilty plea was entered knowingly, voluntarily, and intelligently, and (3) this court's decision in Palmer was not applicable. This timely appeal followed.

Ratcliff contends that the district court erred in denying his petition without conducting an evidentiary hearing. Specifically, Ratcliff

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<sup>2</sup>Palmer v. State, 118 Nev. 823, 59 P.3d 1192 (2002).

<sup>3</sup>Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000).

claims that his guilty plea was entered involuntarily and, pursuant to Palmer, he should be allowed to withdraw his guilty plea because he was never informed that his sentence would include a lifetime supervision requirement. We disagree.

Ratcliff filed his habeas petition more than two years after the entry of his judgment of conviction, and more than one year after the dismissal of his untimely direct appeal. Thus, Ratcliff's petition was untimely filed and procedurally barred absent a demonstration of good cause for the delay and prejudice.<sup>4</sup> On appeal, Ratcliff fails to offer any good cause argument for the delay in the filing of his habeas petition. Nevertheless, Ratcliff may be entitled to a review of his defaulted claims if failure to review them would result in a fundamental miscarriage of justice.<sup>5</sup> Ratcliff, however, cannot demonstrate the existence of a fundamental miscarriage of justice. In Avery v. State, this court held that Palmer does not apply retroactively, therefore, the district court was under no obligation at the time to inform Ratcliff about the lifetime supervision requirement.<sup>6</sup> Accordingly, we conclude that the district court

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<sup>4</sup>See NRS 34.726(1); see also Dickerson v. State, 114 Nev. 1084, 1087-88, 967 P.2d 1132, 1133-34 (1998).

<sup>5</sup>Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

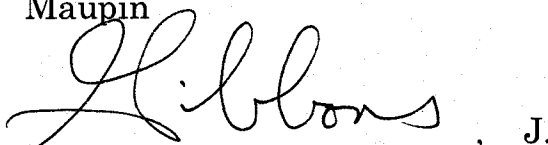
<sup>6</sup>122 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Op. No. 24, March 16, 2006).

did not err in dismissing Ratcliff's petition without conducting an evidentiary hearing,<sup>7</sup> and we

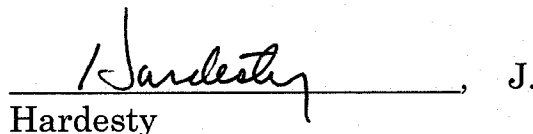
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Janet J. Berry, District Judge  
Scott W. Edwards  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>7</sup>See Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004) (habeas petitioner is not entitled to an evidentiary hearing if the claims are repelled by the record); see also State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003) (holding that application of the procedural default rules to post-conviction petitions for writs of habeas corpus is mandatory).