

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN FOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45549

FILED

SEP 26 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On December 11, 2002, the district court convicted appellant, pursuant to a guilty plea, of aggravated stalking and burglary. The district court sentenced appellant to serve a term of seventy-two months to one hundred and eighty months for stalking and a concurrent term of sixteen to seventy-two months for burglary. This court dismissed appellant's untimely appeal from his judgment of conviction for lack of jurisdiction.¹

On September 15, 2003, appellant filed a proper person motion to withdraw his guilty plea in the district court. In his motion, appellant raised several claims of ineffective assistance of trial counsel, and argued that his guilty plea was not knowingly and voluntarily

¹Fox v. State, Docket No. 44723 (Order Dismissing Appeal, March 22, 2005).

entered. On October 3, 2003, the district court denied appellant's motion. This court affirmed the order of the district court.²

On December 10, 2003, appellant filed a motion to correct an illegal sentence in the district court. On January 9, 2004, the district court denied appellant's motion. This court dismissed appellant's untimely appeal for lack of jurisdiction.³

On December 15, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 26, 2004, appellant filed an amended petition. The State filed an opposition. On May 14, 2004, the district court denied appellant's petition. On appeal, this court affirmed the order of the district court denying appellant's petition.⁴

On April 29, 2005, appellant filed a proper person petition for a writ of mandamus in the district court. In his petition, appellant challenged the validity of his judgment of conviction. The State opposed the petition. On June 3, 2005, and on June 7, 2005, the district court entered written orders denying appellant's petition. This appeal followed.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or

²Fox v. State, Docket No. 42179 (Order of Affirmance, September 1, 2004).

³Fox v. State, Docket No. 43206 (Order Dismissing Appeal, June 9, 2004).

⁴Fox v. Warden, Docket No. 43030 (Order of Affirmance, September 17, 2004).

station or to control an arbitrary or capricious exercise of discretion.⁵ A writ of mandamus may issue only where there is no plain, speedy, and adequate remedy at law.⁶ A petition for extraordinary relief is addressed to the sound discretion of the court.⁷

Based upon our review of the record on appeal, we conclude that the district court did not abuse its discretion in denying appellant's petition. Appellant may not challenge the validity of his judgment of conviction by way of a petition for a writ of mandamus.⁸ To the extent that appellant's petition may be construed to be a post-conviction petition for a writ of habeas corpus, appellant's petition was untimely, an abuse of the writ, and appellant failed to demonstrate good cause to excuse his procedural defects.⁹ Therefore, we affirm the order of the district court denying appellant's petition.

⁵NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁶NRS 34.170.

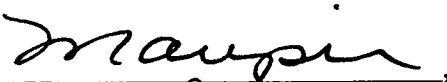
⁷State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983).

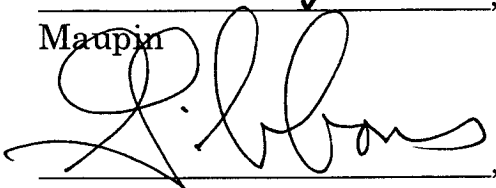
⁸See NRS 34.724(2)(b).

⁹See NRS 34.726(1); NRS 34.810 (2), (3). It appears that appellant argued that he had good cause to excuse his procedural defects because he was deprived of a direct appeal without consent, he needed to exhaust state remedies, he was raising newly discovered grounds, and he was confused about how to proceed. Appellant failed to demonstrate good cause to excuse the procedural defects in the instant case. See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

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

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).