

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARLIN OLIVAS A/K/A MARLON  
OLIVAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45918

**FILED**

FEB 10 2006

*[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On April 2, 2002, the district court convicted appellant, pursuant to an Alford<sup>1</sup> plea, of battery with the use of a deadly weapon on a police officer with substantial bodily harm, assault on a police officer with the use of a deadly weapon, and mistreatment of a police animal. The district court sentenced appellant to serve consecutive terms totaling 108 to 288 months in the Nevada State Prison. Appellant did not file a direct appeal.

On March 4, 2003, appellant, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. After conducting an evidentiary

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<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

hearing, the district court denied the petition on August 5, 2003. This court affirmed the denial of appellant's petition on appeal.<sup>2</sup>

On April 4, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed 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 August 9, 2005, the district court dismissed appellant's petition as procedurally barred. This appeal followed.

Appellant filed his petition approximately three years after the judgment of conviction was entered. Thus, appellant's petition was untimely filed.<sup>3</sup> Moreover, appellant's petition was also an abuse of the writ because it raised new claims that could have been raised in his earlier petition.<sup>4</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>5</sup>

Appellant made various attempts to demonstrate good cause for his procedural defects. Appellant first contended that he should be excused from the procedural defects because the district court improperly relied on a California conviction that he had pleaded guilty to, but had not

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<sup>2</sup>Olivas v. State, Docket No. 41939 (Order of Affirmance, May 28, 2004).

<sup>3</sup>See NRS 34.726(1).

<sup>4</sup>See NRS 34.810(2).

<sup>5</sup>See NRS 34.726(1); NRS 34.810(3).

been sentenced for, in violation of recent U.S. Supreme Court cases Blakely v. Washington,<sup>6</sup> Shepard v. U.S.,<sup>7</sup> and Crawford v. Washington.<sup>8</sup>

Blakely and Shepard involved sentences beyond the statutory maximums and therefore do not apply to appellant, as he was sentenced within the statutory limits. Crawford dealt with testimonial hearsay evidence within a trial setting, and therefore, does not apply to appellant as his prior California arrest and plea were presented to the district court prior to sentencing. Therefore, this claim did not excuse his procedural defects, and the district court did not err in determining that this claim did not establish good cause.

Next, appellant contended that he had good cause because his counsel did not inform him that he could file a direct appeal. Appellant did not establish that an impediment external to the defense prevented him from raising his claims earlier.<sup>9</sup> An appeal deprivation claim does not constitute good cause to excuse an untimely petition absent limited circumstances.<sup>10</sup> Thus, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause to excuse his

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<sup>6</sup>542 U.S. 296 (2004).

<sup>7</sup>544 U.S. 13 (2005).

<sup>8</sup>541 U.S. 36 (2004).

<sup>9</sup>See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>10</sup>See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

procedural defaults.<sup>11</sup> Therefore, we affirm the order of the district court dismissing appellant's 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.<sup>12</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.  
Douglas

Becker, J.  
Becker

Parraguirre, J.  
Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge  
Marlin Olivas  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>11</sup>See Lozada, 110 Nev. 349, 871 P.2d 944; see also Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).

<sup>12</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).