

IN THE SUPREME COURT OF THE STATE OF NEVADA

DWIGHT DONNELL JIMERSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46125

**FILED**

FEB 24 2006

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 appellant's petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On July 26, 1996, the district court convicted appellant, pursuant to an Alford<sup>1</sup> plea, for battery with the use of a deadly weapon. The district court sentenced appellant to serve a term of six years in the Nevada State Prison, suspended the sentence, and placed appellant on probation for a period not to exceed five years. Appellant was honorably discharged from probation on July 1, 2001. No direct appeal was taken.

On July 28, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On December 12, 2005, the district court denied the petition. This appeal followed.

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

Appellant was precluded from obtaining relief in a habeas corpus petition because he was not under restraint for the offense at issue at the time he filed his petition.<sup>2</sup> This court has held that a defendant who has completed his sentence may not seek habeas corpus relief from that conviction even if that conviction has been used to enhance a sentence that the defendant is presently serving.<sup>3</sup> "Allowing a petitioner to file a post-conviction habeas corpus petition to challenge a judgment of conviction, after the petitioner has already completed service of the sentence imposed pursuant to that conviction, undermines the varied interests in the finality of criminal convictions."<sup>4</sup> Appellant was not in custody for the instant offense at the time he filed the petition.<sup>5</sup> Furthermore, appellant's petition was procedurally barred as it was filed more than nine years after entry of the judgment of conviction, and appellant failed to

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<sup>2</sup>See Nev. Const. art. 6, § 6(1) (stating that the district courts may issue a writ of habeas corpus on petition by "any person who is held in actual custody in their respective districts, or who has suffered a criminal conviction in their respective districts and has not completed the sentence imposed pursuant to the judgment of conviction").

<sup>3</sup>See Jackson v. State, 115 Nev. 21, 973 P.2d 241 (1999).

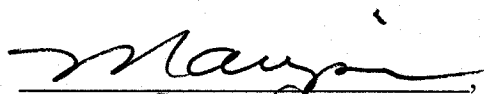
<sup>4</sup>Id. at 23 n.2, 973 P.2d at 242 n.2.

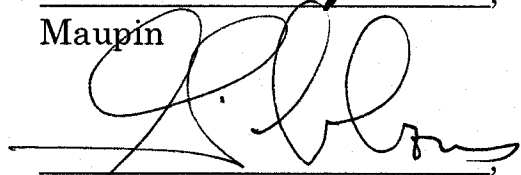
<sup>5</sup>In his petition, appellant acknowledged that he no longer in custody and that he was seeking to challenge his prior Nevada conviction because he had been denied a work card as an unarmed security officer.

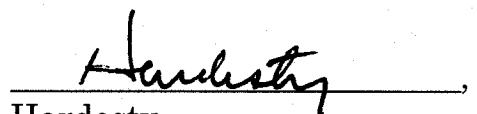
demonstrate good cause to excuse the delay in filing.<sup>6</sup> Therefore, we affirm the order of the district court dismissing appellant's petition.

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>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Eighth Judicial District Court Dept. 16, District Judge  
Dwight Donnell Jimerson  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>6</sup>See NRS 34.726(1) (providing that a post-conviction petition for a writ of habeas corpus must be filed within one year after entry of the judgment of conviction); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).