

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY BRIAN KEELER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46433

FILED

MAY 02 2006

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. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

On July 10, 2000, the district court convicted appellant, pursuant to a guilty plea, of attempted sexual assault. The district court sentenced appellant to serve a term of 50 to 180 months in the Nevada State Prison. Appellant also received the special sentence of lifetime supervision. This court affirmed appellant's conviction on direct appeal.¹ The remittitur issued on November 28, 2000.

On November 23, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint

¹Keeler v. State, Docket No. 36469 (Order of Affirmance, October 30, 2000).

counsel to represent appellant or to conduct an evidentiary hearing. On December 5, 2005, the district court denied appellant's petition.² This appeal followed.

In his petition, appellant claimed his conviction and sentence were invalid because he was not informed of or canvassed on the conditions of lifetime supervision, lifetime supervision constitutes double jeopardy, lifetime supervision is unconstitutional, lifetime supervision was a breach of his guilty plea agreement, DNA collection is unconstitutional, and his counsel was ineffective for failing to file a direct appeal after he requested counsel do so.

Appellant filed his petition nearly five years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

In an attempt to overcome the procedural bar, appellant argued he could not have raised his claims relating to lifetime supervision until this court's decision in Palmer, in which we held that lifetime

²On December 19, 2005, the district court entered an amended order denying the petition, which corrected a clerical error in the original order.

³See NRS 34.726(1). Although the district court reached the merits of appellant's claims, this court may affirm the district court's decision on grounds different from those relied upon by the district court. See Milender v. Marcum, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994).

⁴See NRS 34.726(1).

supervision is a direct consequence of a guilty plea of which a defendant pleading guilty must be aware.⁵ However, appellant's conviction was final on or about December 15, 2000, and we issued our decision in Palmer on December 19, 2002. This court has recently held that Palmer does not apply retroactively to cases that were final when Palmer was decided.⁶ Accordingly, we conclude appellant failed to demonstrate good cause and prejudice sufficient to overcome the procedural bar to his lifetime supervision claims. Appellant made no attempt to show good cause for failing to bring his DNA related or ineffective assistance of counsel claims in a timely fashion.⁷ Further, appellant failed to demonstrate that his appeal deprivation claim was not reasonable available with the statutory time period for filing a post-conviction petition for a writ of habeas

⁵See Palmer v. State, 118 Nev. 823, 59 P.3d 1192 (2002).

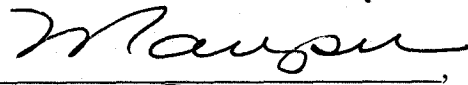
⁶See Avery v. State, 122 Nev. ___, 129 P.3d 664 (2006). Although it is not necessary to our decision in this case, we note that the record on appeal in this case indicates lifetime supervision was included in the guilty plea agreement appellant signed, which would satisfy Palmer. Palmer also noted that a defendant need not be informed of the specific conditions of lifetime supervision at entry of the plea because these conditions are not determined until after a hearing just prior to expiration of a sex offender's term of imprisonment, parole, or probation. Palmer, 118 Nev. at 831, 59 P.3d at 1197.

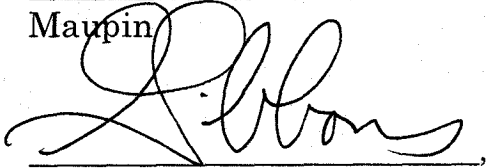
⁷We note that appellant did in fact pursue a direct appeal of his conviction, despite his claim to the contrary in the instant petition.

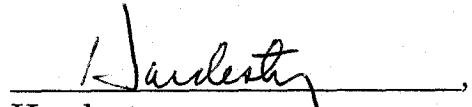
corpus.⁸ We therefore conclude appellant failed to demonstrate good cause and prejudice sufficient to overcome the procedural bar to these claims.

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Maupin
 J.
Gibbons

 J.
Hardesty

cc: Hon. Michael R. Griffin, District Judge
Timothy Brian Keeler
Attorney General George Chanos/Carson City
Carson City District Attorney
Carson City Clerk

⁸See Hathaway v. State, 119 Nev. 248, 253-54, 71 P.3d 503, 507 (2003).

⁹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).