

IN THE SUPREME COURT OF THE STATE OF NEVADA

IKEMEFULA CHARLES IBEABUCHI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46462

**FILED**

SEP 12 2006

ORDER OF AFFIRMANCE

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

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 February 19, 2002, the district court convicted appellant, pursuant to an Alford<sup>1</sup> plea, of one count each of battery with the intent to commit a crime and attempted sexual assault. The district court sentenced appellant to serve a term of 24 to 120 months in the Nevada State Prison for battery and a consecutive term of 36 to 240 months for attempted sexual assault. The district court also imposed a special sentence of lifetime supervision. This court affirmed the judgment of conviction and sentence on direct appeal.<sup>2</sup> The remittitur issued on September 17, 2002.

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

<sup>2</sup>Ibeabuchi v. State, Docket No. 39265 (Order of Affirmance, August 21, 2002).

On January 13, 2003, appellant, with the aid of counsel, filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and appellant filed a reply. On November 19, 2003 and December 22, 2003, the district court entered orders denying appellant's petition. Appellant did not appeal the denial of his petition.

On August 24, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed and moved to dismiss the petition. Appellant opposed the motion to dismiss and the State filed a reply to appellant's opposition. 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 December 9, 2005, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately two years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>3</sup> Moreover, appellant's petition was successive and constituted an abuse of the writ because appellant raised new grounds that were not raised in his prior petition.<sup>4</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>5</sup>

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<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).

In an attempt to excuse his procedural defects, appellant argued that, in violation of this court's holding in Palmer v. State,<sup>6</sup> he was never notified that the imposition of a special sentence of lifetime supervision was mandatory for his offense. Although appellant acknowledged that he was aware of the imposition of the special sentence of lifetime supervision on the date he was sentenced, he claimed that he did not become aware of the ramifications of lifetime supervision until April 2005. Appellant claimed that because he filed his petition within one year of becoming aware of the ramifications of lifetime supervision his petition was timely filed. Finally, appellant asserted that the ineffective assistance of counsel for failing to raise his claim regarding lifetime supervision in his first petition constituted good cause for raising the claim in a second petition.

Based upon our review of the record on appeal, we conclude appellant failed to demonstrate good cause and prejudice to excuse his procedural defects. Palmer does not apply retroactively to convictions that became final before Palmer was decided.<sup>7</sup> Appellant's conviction became final before Palmer was decided. Therefore, the holding in Palmer does not constitute good cause to excuse the filing of an untimely and successive petition. Additionally, appellant's claim of ineffective assistance of post-conviction counsel does not constitute good cause for

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<sup>6</sup>118 Nev. 823, 59 P.3d 1192 (2002).

<sup>7</sup>Avery v. State, 122 Nev. \_\_\_, 129 P.3d 664 (2006).

filing a successive petition.<sup>8</sup> Accordingly, we conclude the district court did not err in denying 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>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

Becker, J.  
Becker

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

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<sup>8</sup>See McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996) (holding that an ineffective assistance of post-conviction counsel claim does not constitute good cause for filing a successive petition where there is no right to counsel or effective assistance of counsel).

<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

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