

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES KENNETH MIZE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47014

FILED

JUL 05 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing a petition for a writ of certiorari. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On November 18, 1993, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of nine years in the Nevada State Prison. This court dismissed appellant's direct appeal.¹

On May 16, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition as untimely. This court affirmed the order of the district court on appeal.²

On July 11, 2002, appellant filed a proper person motion to modify and correct sentence. The State opposed the motion. The district

¹Mize v. State, Docket No. 25193 (Order Dismissing Appeal, December 19, 1994).

²Mize v. State, Docket No. 38275 (Order of Affirmance, May 31, 2002).

court denied the motion, and this court affirmed the order of the district court on appeal.³

On November 30, 2005, appellant filed a proper person petition for a writ of certiorari in the district court. The State opposed the petition. On May 18, 2006, the district court dismissed the petition. This appeal followed.

Appellant claimed that the district attorney committed perjury or suborned perjury in a return filed in 1993 to appellant's petition for a writ of habeas corpus. Appellant requested that he be immediately released.

We conclude that the district court did not err in denying appellant's petition. First, the claim raised in the petition was not cognizable in a petition for a writ of certiorari as appellant's claim did not implicate an officer exercising a judicial function.⁴ Second, appellant's claim essentially challenged the validity of the judgment of conviction, and as such, it should have been raised in a post-conviction petition for a writ of habeas corpus.⁵ To the extent that appellant's petition is a petition for

³Mize v. State, Docket No. 40558 (Order of Affirmance, October 28, 2003).

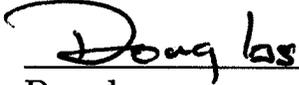
⁴See NRS 34.020(2) ("The writ shall be granted in all cases when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal board or officer and there is no appeal, nor, in the judgment of the court, any plain, speedy and adequate remedy.").

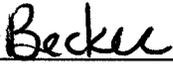
⁵See NRS 34.724(2)(b) (stating that a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them").

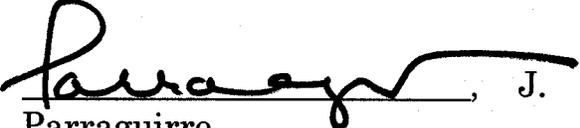
a writ of habeas corpus, it was untimely filed, and appellant failed to demonstrate good cause for the delay.⁶ Therefore, we affirm the order of the district court dismissing appellant's petition.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

⁶See NRS 34.726(1); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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

⁸We 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. Jennifer Togliatti, District Judge
James Kenneth Mize
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk