

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLERMO OCAMP BALTAZAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47174

FILED

JUL 10 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 denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On April 2, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of child abuse and neglect with substantial bodily harm. The district court sentenced appellant to serve a term of twenty-four to sixty months in the Nevada State Prison. No direct appeal was taken.

On January 19, 2006, 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 March 21, 2006, the district court denied appellant's petition. This appeal followed.

We conclude that the district court correctly determined that 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.¹ 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.² Appellant was not in custody in the instant case at the time he filed the petition. In his petition, appellant acknowledged that he was in federal custody pursuant to deportation proceedings. Further, appellant's petition was procedurally barred as it was filed almost five years after entry of the judgment of conviction, and appellant failed to demonstrate good cause to excuse the delay in filing.³ Therefore, we affirm the order of the district court denying appellant's petition.

¹See Nev. Const. art. 6, § 6(1) (providing 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.").

²See Jackson v. State, 115 Nev. 21, 973 P.2d 241 (1999).

³See 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 unless there is good cause shown for the delay); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Willermo Ocamp Baltazar
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).