

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT G. BONE, AKA, WALTER  
JAMES TRIPP  
Appellant  
vs.  
THE STATE OF NEVADA,  
Respondent

No. 47297

**FILED**

**AUG 22 2006**

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
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; Michelle Leavitt, Judge.

On March 5, 1992, the district court convicted appellant, pursuant to a guilty plea, of three counts of sexual assault. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after five years had been served on each sentence and a concurrent term of life with the possibility of parole. No direct appeal was taken.

On May 8, 1992, the district court amended the judgment of conviction to include restitution. No appeal was taken.

On February 25, 1998, appellant, with the assistance of counsel, filed a motion to modify sentence in the district court. The State opposed the motion. Appellant filed a reply. On April 16, 1998, the district court denied the motion. No appeal was taken.

On June 10, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. Appellant filed a reply. After conducting an evidentiary hearing

on the issue of good cause, the district court denied the petition. This court affirmed the order of the district court on appeal.<sup>1</sup>

On March 16, 2004, appellant, with the assistance of counsel, filed a document labeled, "motion(s) to correct judgment(s) of conviction, to correct and/or set aside illegal judgment of conviction, to correct pre-sentence report, to re-sentence (if necessary) and other relief." On November 29, 2004, after conducting hearings on the motion, the district court entered an amended judgment of conviction for the purpose of striking restitution and correcting a clerical error relating to the date of the original sentencing hearing. However, the amended judgment of conviction was rife with errors. Subsequently, on January 6, 2005, the district court entered a second amended judgment of conviction for the purpose of striking restitution and correcting the clerical error in the judgment of conviction relating to the date of the original sentencing hearing. On January 21, 2005, the district court entered an order that granted the motion to correct in part and denied the motion to correct in part.

On February 4, 2005, appellant, with the assistance of counsel, filed a document labeled, "motion to amend, make additional findings, reconsider and other post-order relief." On April 14, 2005, the district court entered an order denying the motion. On May 6, 2005, appellant filed a notice of appeal from the orders of January 21, 2005, and April 14, 2005. This court dismissed the appeal as the appeal from the

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<sup>1</sup>Tripp v. State, Docket No. 41193 (Order of Affirmance, February 25, 2004). Appellant was represented by counsel at the evidentiary hearing and on appeal.

January 21, 2005 order was untimely and the April 14, 2005 order was not substantively appealable.<sup>2</sup>

On January 6, 2006, appellant, with the assistance of counsel, filed a second post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that the petition was untimely filed. Moreover, the State specifically pleaded laches. Appellant filed a reply. On May 3, 2006, the district court denied appellant's petition. This appeal followed.<sup>3</sup>

In his petition, appellant claimed that his conviction was invalid because his guilty plea was not entered knowingly and voluntarily and because he received ineffective assistance of counsel. Appellant further claimed that his due process rights were violated and his sentence was based upon misleading, erroneous information. It appears that appellant also challenged the denial of parole. Finally, appellant claimed that he received ineffective assistance of post-conviction counsel.

Preliminarily, we note that only those claims challenging the validity of the guilty plea and the effective assistance of trial counsel were permitted to be raised in the petition because appellant was challenging the validity of a judgment of conviction based upon a guilty plea; the remainder of appellant's claims were outside the scope of a petition challenging a judgment of conviction based upon a guilty plea.<sup>4</sup> Further,

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<sup>2</sup>Tripp v. State, Docket No. 45239 (Order Dismissing Appeal, September 20, 2005).

<sup>3</sup>Appellant is proceeding in proper person in this appeal.

<sup>4</sup>See NRS 34.810(1)(a) (setting forth the scope of a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea).

we note that any challenge to the denial of parole was patently without merit.<sup>5</sup>

Nonetheless, the claims in the petition challenging the validity of the plea and the effective assistance of trial counsel were filed almost fourteen years after entry of the original judgment of conviction. Thus, appellant's petition was untimely filed.<sup>6</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice.<sup>7</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>8</sup>

In an attempt to excuse his procedural defects, appellant argued that his petition was timely filed from entry of the second amended judgment of conviction on January 6, 2005. Appellant further argued that he had good cause because he had received ineffective assistance of post-conviction counsel in the years immediately following entry of the original judgment of conviction.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. In applying Nevada's procedural time bar set forth in NRS 34.726(1), this court has consistently held that a post-conviction petition for a writ of

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<sup>5</sup>Parole is an act of grace of the State; a prisoner has no right to parole. See NRS 213.10705; Severance v. Armstrong, 96 Nev. 836, 620 P.2d 369 (1980).

<sup>6</sup>See NRS 34.726(1).

<sup>7</sup>See id.

<sup>8</sup>See NRS 34.800(2).

habeas corpus must be filed within one year from entry of the original judgment of conviction or within one year from the issuance of the remittitur from a timely direct appeal unless the petitioner can demonstrate cause for the delay and undue prejudice.<sup>9</sup> In Sullivan, we further suggested that the entry of an amended judgment of conviction may provide good cause "if the claims presented in a petition filed within one year of the entry of the amended judgment challenge the proceedings leading to a substantive amendment to the judgment and could not have been raised in prior proceedings."<sup>10</sup> Because appellant did not raise any claims challenging the amendments contained within the second amended judgment of conviction, the district court's entry of an amended judgment of conviction in 2005 did not provide good cause for filing a late petition challenging the validity of the plea and the effective assistance of counsel in the proceedings leading up to entry of the original judgment of conviction in 1992.

Appellant claimed, however, that the Ninth Circuit Court of Appeals decision in Collier v. Bayer,<sup>11</sup> rendered Sullivan inapplicable in the instant case. This court is not bound by, nor is it persuaded by, the decision in Collier.<sup>12</sup> At the time of appellant's original judgment of

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<sup>9</sup>See Sullivan v. State, 120 Nev. 537, 96 P.3d 761 (2004); Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998).

<sup>10</sup>120 Nev. at 541, 96 P.3d at 764.

<sup>11</sup>408 F.3d 1279 (9th Cir. 2005).

<sup>12</sup>See Blanton v. North Las Vegas Mun. Ct., 103 Nev. 623, 748 P.2d 494 (1987), aff'd sub nom., Blanton v. City of North Las Vegas, Nev., 489 U.S. 538 (1989).

conviction, the amendments to the judgment of conviction, and the filing of his post-conviction motions, this court had consistently recognized time limitations on the filing of a habeas corpus petition challenging the validity of a judgment of conviction.<sup>13</sup> Nothing in NRS 34.726(1) suggests that amending the judgment of conviction to correct a clerical error, or even to correct an error to the benefit of the petitioner, should result in re-starting the clock to file a habeas corpus petition raising claims that could have been raised within one year from the original judgment of

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<sup>13</sup>See Sullivan, 120 Nev. at 540, 96 P.3d at 764 (recognizing that re-starting the one-year time period every time a judgment of conviction is amended would frustrate the purpose and spirit of NRS 34.726); Pellegrini v. State, 117 Nev. 860, 875, 34 P.3d 519, 529 (2001) (recognizing that the legislature's one-year time limit "evinces intolerance toward perpetual filing of petitions for relief"); Dickerson, 114 Nev. at 1088, 967 P.2d at 1134 (recognizing that limiting the timely filing of a post-conviction petition for a writ of habeas corpus to the issuance of a remittitur from a timely direct appeal would prevent petitioners from perpetually re-starting the one-year clock by filing successive notices of appeal and would comport with the legislature's vision); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994) ("Without such limitations [the requirement that a petitioner demonstrate good cause and prejudice to excuse a procedural defect] on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies."); Groesbeck v. Warden, 100 Nev. 259, 679 P.2d 1268 (1984) (recognizing that "petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system" and that "necessity for a workable system dictates that there must exist a time when a criminal conviction is final"); Rogers v. Warden, 86 Nev. 359, 362, 468 P.2d 993, 994 (1970) (recognizing that a petitioner should be required to assert all claims in one petition as the filing of many piecemeal petitions place an unnecessary burden upon the courts); see also Engle v. Isaac, 456 U.S. 107 (1982) (recognizing the importance of finality of a judgment of conviction).

conviction.<sup>14</sup> As is illustrated by the cases discussed in the preceding footnotes, Nevada has long recognized limitations to the time for filing a post-conviction petition for relief and Sullivan did nothing more than provide a reasonable interpretation of NRS 34.726 based upon the legislative intent and this court's existing case law.

Finally, this court already determined in the prior habeas corpus proceeding that appellant's claims of ineffective assistance of post-conviction counsel did not excuse his delay. The doctrine of the law of the case prevents further litigation of this good cause claim.<sup>15</sup> Appellant failed to demonstrate that an impediment external to the defense excused his delay in the instant case.<sup>16</sup> Moreover, appellant failed to overcome the presumption of prejudice to the State. Prejudice is great in the instant case where a judgment of conviction is being attacked almost fourteen years after entry.<sup>17</sup> Therefore, we affirm the order of the district court denying the petition as procedurally time barred and barred by laches.

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<sup>14</sup>See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003) (recognizing that all claims reasonably available within the statutory time period must be raised within the statutory time period).

<sup>15</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

<sup>16</sup>See Lozada, 110 Nev. 349, 871 P.2d 944.

<sup>17</sup>See Groesbeck, 100 Nev. at 260-61, 679 P.2d at 1269 ("The lengthy passage of time between conviction and a subsequent challenge is a factor which by itself unduly works to the advantage of a felon belatedly seeking relief from conviction. Memories of the crime may diminish and become attenuated. The facts and circumstances of the offense may be impossible to reconstruct.").

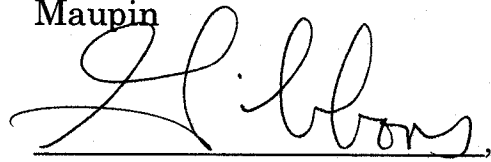
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>18</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.



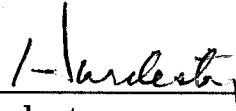
J.

Maupin



J.

Gibbons



J.

Hardesty

cc: Hon. Michelle Leavitt, District Judge  
Robert G. Bone  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>18</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).