

IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD GOOSBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47326

FILED

AUG 25 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On April 23, 1999, the district court convicted appellant, pursuant to an Alford¹ plea, of possession of a firearm by an ex-felon. The district court sentenced appellant to serve a term of thirteen to sixty months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation not to exceed three years. Appellant did not file a direct appeal.

On January 16, 2001, the district court entered an amended judgment of conviction that modified the terms of appellant's probation. On June 6, 2001, the district court revoked appellant's probation and amended the judgment of conviction to award appellant with 280 days' credit for time served. Appellant did not file an appeal from either of the amended judgments of conviction.

¹North Carolina v. Alford, 400 U.S. 25 (1970).

On December 20, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.² The State opposed the petition. Appellant filed a reply. 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 April 5, 2002, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than two and one-half years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.⁴

Appellant made no attempt to demonstrate good cause for the delay in filing his petition. To the extent that appellant relied upon the entry of the amended judgment of conviction to establish the time for filing his petition, we conclude that such reliance was improper. This court has held that "untimely post-conviction claims that arise out of the proceedings involving the initial conviction . . . and that could have been raised before the judgment of conviction was amended are procedurally barred."⁵ Appellant's claims did not challenge the probation revocation proceedings. Thus, the amended judgment of conviction did not provide

²The petition was concurrently filed in district court case number C172099.

³See NRS 34.726(1).

⁴See id.

⁵Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

good cause for the untimely filing of his petition. Accordingly, we conclude the district court did not err in denying appellant's petition.⁶

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.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Michael A. Cherry, District Judge
Todd Goosby
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶We note that appellant's claim regarding the award of credits did not implicate the award of credits in this district court case, and, therefore, we conclude the district court did not err by not addressing this claim.

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