

IN THE SUPREME COURT OF THE STATE OF NEVADA

KARL ROBERT SWEETAN, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47416

FILED

SEP 20 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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On February 14, 2005, the district court convicted appellant, pursuant to an Alford¹ plea, of two counts of attempted sexual assault. The district court sentenced appellant to serve two concurrent terms of 48 to 144 months in the Nevada State Prison. No direct appeal was taken. On June 16, 2005, the district court entered an amended judgment of conviction to include the special sentence of lifetime supervision. No appeal was taken from the amended judgment of conviction.

On March 3, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On March 22, 2006, appellant filed a petition to supersede the March 3, 2006 petition. The State opposed the petition. Appellant filed a response. 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

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

June 28, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised claims arising from the original judgment of conviction entered on February 14, 2005 and claims arising from the amended judgment of conviction entered on June 16, 2005. To the extent that appellant raised claims arising from the original judgment of conviction, appellant's petition was untimely filed because appellant filed his petition more than one year after entry of the judgment of conviction.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³

In an attempt to excuse his procedural defects, appellant claimed that his petition was timely filed from entry of the second amended judgment of conviction on June 16, 2005. Appellant claimed that the procedural time bar could not be applied to his 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 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.⁴ In Sullivan, this court 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

²See NRS 34.726(1).

³See id.

⁴See Sullivan v. State, 120 Nev. 537, 96 P.3d 761 (2004); Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998).

barred."⁵ In the instant case, entry of the amended judgment of conviction did not provide good cause for raising those claims arising from the original judgment of conviction, and therefore, we conclude that those claims arising from the original judgment of conviction were procedurally time barred.⁶

In Sullivan, this court 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."⁷ Appellant raised several claims challenging the amendment of the judgment of conviction, and thus, we conclude that appellant demonstrated good cause for raising those claims challenging the amendment to the judgment of conviction.

Appellant challenged the special sentence of lifetime supervision imposed in the amended judgment of conviction. Appellant claimed that his guilty plea was not entered voluntarily or knowingly because he was not advised about the precise conditions of lifetime supervision. Appellant further claimed that the judgment of conviction should not have been amended to include lifetime supervision without

⁵See Sullivan, 120 Nev. at 541, 96 P.3d at 764.

⁶Appellant claimed that the Ninth Circuit Court of Appeals decision in Collier v. Bayer, 408 F.3d 1279 (9th Cir. 2005), rendered Sullivan inapplicable in the instant case. The judgment of conviction and amended judgment of conviction in the instant case were entered after this court's decision in Sullivan, and thus, Sullivan was applicable as it was well-established at the time appellant filed his petition.

⁷120 Nev. at 541, 96 P.3d at 764.

appellant being present. Appellant further claimed that lifetime supervision violates various constitutional rights.

Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate that his guilty plea was entered involuntarily or unknowingly.⁸ The particular conditions of lifetime supervision are tailored to each individual case and, notably, are not determined until after a hearing is conducted just prior to the expiration of the sex offender's completion of a term of parole or probation, or release from custody.⁹ Thus, all that is constitutionally required is that the totality of the circumstances demonstrates that a petitioner was aware that he would be subject to the consequence of lifetime supervision before entry of the plea and not the precise conditions of lifetime supervision.¹⁰ Here, appellant was informed in the written guilty plea agreement that he was subject to the special sentence of lifetime supervision. The special sentence of lifetime supervision was mandatory in the instant case, and thus, the district court did not err in imposing lifetime supervision.¹¹ Appellant's claims that the district court improperly amended the

⁸See State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

⁹See NRS 213.1243(1); NAC 213.290.

¹⁰Palmer v. State, 118 Nev. 823, 831, 59 P.3d 1192, 1197 (2002). We note that in Palmer this court recognized that under Nevada's statutory scheme, a defendant is provided with written notice and an explanation of the specific conditions of lifetime supervision that apply to him "[b]efore the expiration of a term of imprisonment, parole or probation." Id. at 827, 59 P.3d at 1194-95 (emphasis added).

¹¹NRS 176.0931(1).

judgment of conviction without appellant being present and that the conditions of lifetime supervision violated his constitutional rights were improperly raised in the instant petition.¹² Therefore, we conclude that the district court did not err in denying these claims.

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.¹³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁴

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

¹²See NRS 34.810(1)(a).

¹³See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁴We 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. Lee A. Gates, District Judge
Karl Robert Sweetan III
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk