

IN THE SUPREME COURT OF THE STATE OF NEVADA

NYUTU WOODS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47629

FILED

OCT 23 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Rihaden
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; Joseph T. Bonaventure, Judge.

On September 6, 2002, the district court convicted appellant, pursuant to an Alford¹ plea, of one count each of sexual assault of a minor under the age of sixteen and attempted lewdness with a child under the age of fourteen. The district court sentenced appellant to serve a term of 60 to 240 months in the Nevada State Prison for sexual assault and a consecutive term of 36 to 240 months for attempted lewdness. The district court also imposed the special sentence of lifetime supervision. This court affirmed the judgment of conviction and sentence on appeal.² The remittitur issued on February 25, 2003.

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

²Woods v. State, Docket No. 40251 (Order of Affirmance, January 28, 2003).

On December 11, 2003, appellant, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court conducted an evidentiary hearing on April 29, 2004. At the evidentiary hearing, appellant, with the assistance of counsel, withdrew his petition.

On April 17, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed and moved to dismiss 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 June 22, 2006, the district court denied appellant's petition. This appeal followed.³

Appellant filed his petition more than three years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.⁵

In an attempt to demonstrate cause for the delay, appellant argued that he was required to file the petition in order to exhaust state remedies. Appellant also argued that good cause supports the filing of an untimely petition because he did not find out about this court's decision on direct appeal until eight months after this court decided the appeal, he is not knowledgeable of the law and he incorrectly filed motions. Based upon

³To the extent that appellant challenges the district court's denial of his motion for the appointment of counsel, we conclude that the district court did not err in denying the motion. See NRS 34.750.

⁴See NRS 34.726(1).

⁵See id.

our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause to excuse his procedural defects.⁶ Filing a petition for the purpose of exhaustion is not good cause. Further, because appellant filed a timely post-conviction petition for a writ of habeas corpus that he subsequently withdrew, the record belies appellant's claim that he could not file a timely petition.⁷ Thus, we conclude that the district court did not err in denying appellant's petition as procedurally barred.

Moreover, as a separate and independent ground for denying relief, appellant's claims lacked merit. Appellant claimed that his counsel was ineffective for recommending he enter a guilty plea. This court rejected this claim on direct appeal. Appellant was barred by the law of the case from reraising this issue.⁸

Appellant also argued that the district court illegally sentenced him because he is not guilty of the charges, and the district court did not ask him why he was pleading guilty to a crime he did not commit or question his counsel why the charges against appellant were not dropped. In Nevada, a plea entered pursuant to Alford constitutes a plea of nolo contendere, in which the defendant maintains his innocence but authorizes the district court to treat him as if he were guilty.⁹ On

⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

⁷See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

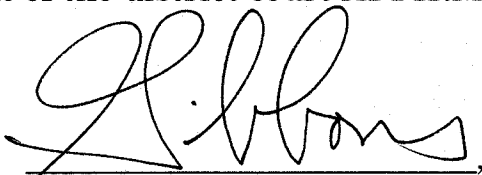
⁸See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

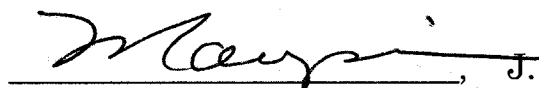
⁹See State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

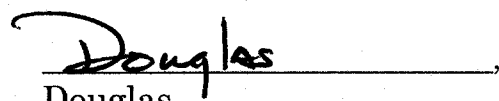
direct appeal, this court determined that appellant's plea was knowingly and voluntarily entered. Appellant failed to demonstrate that the district court erred by failing to inquire why he was entering the plea or why counsel did not move to dismiss the charges. Further, to the extent that this claim can be construed as a motion to correct an illegal sentence, the claim fell outside the very narrow scope of claims that are permitted in a motion to correct an illegal sentence.¹⁰

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.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Gibbons J.


Maupin J.


Douglas J.

¹⁰See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Joseph T. Bonaventure, District Judge
Nyutu Woods
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk