

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO M. BREAKMAN A/K/A
ANTONIO N. BREAKMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48857

FILED

JUN 22 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Valorie Vega, Judge.

On October 28, 2004, the district court convicted appellant, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 32 to 144 months in the Nevada State Prison. This court affirmed appellant's judgment of conviction on appeal, but remanded for the limited purpose of correcting a clerical error in the judgment of conviction.¹ The remittitur issued on June 14, 2005. The district court entered an amended judgment of conviction correcting the clerical error on May 31, 2005. This court dismissed a subsequent appeal from the purported denial of a motion to correct an illegal sentence as no such motion had been filed in or denied by the district court.²

¹Breakman v. State, Docket No. 44246 (Order of Affirmance and Limited Remand to Correct the Judgment of Conviction, May 19, 2005).

²Breakman v. State, Docket No. 45521 (Order Dismissing Appeal, October 25, 2005).

On June 20, 2006, the district court received, and on June 21, 2006, the district court filed appellant's proper person post-conviction petition for a writ of habeas corpus. The State filed a motion to dismiss 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 January 24, 2007, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

Appellant did not attempt to provide good cause for the delay. Rather, appellant appeared to believe that the petition was timely because the petition was received on June 20, 2006, one year from the date that the district court received the remittitur issued by this court on direct appeal.

The district court did not err in determining that appellant's petition was procedurally barred and without good cause. The relevant date for determining the time for filing a timely post-conviction petition for a writ of habeas corpus is the date that the remittitur is issued by this court, and not the date that the remittitur is received in the district court.⁵ Based upon the issuance date in the instant case, appellant's petition was

³See NRS 34.726(1).

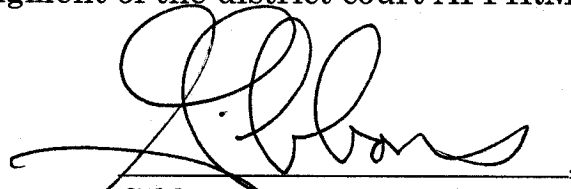
⁴See id.

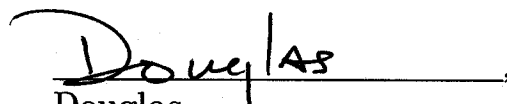
⁵See NRS 34.726(1); Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002).

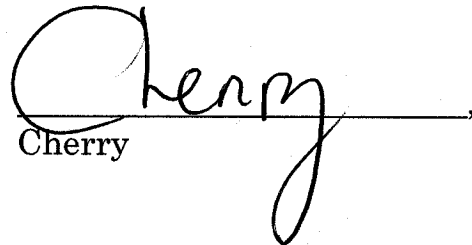
due to be filed on June 14, 2006. Appellant's petition received on June 20, 2006, and filed on June 21, 2006, was therefore untimely and without good cause.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Gibbons, J.


Douglas, J.


Cherry, J.

cc: Hon. Valorie Vega, District Judge
Antonio M. Breakman
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).