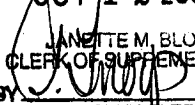


IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, LENARD
VARE; NEVADA STATE BOARD OF
PAROLE AND PROBATION
COMMISSION AND THE STATE OF
NEVADA, OFFICE OF THE ATTORNEY
GENERAL,
Respondents.

No. 49434

FILED

OCT 12 2007
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On November 3, 1998, the district court convicted appellant Ferrill Joseph Volpicelli, pursuant to a guilty plea, of two counts of burglary (counts I and II). The district court sentenced Volpicelli to serve a prison term of 24 to 72 months for count I and a consecutive prison term of 16 to 72 months for count II. The district court suspended execution of the sentence on count II and placed Volpicelli on probation for an indeterminate period not to exceed 3 years "to run consecutively to Count I and consecutively to the Federal prison term." On January 20, 2004, the district court entered an order dishonorably discharging Volpicelli from probation.

On June 25, 2004, Volpicelli filed a proper person "motion to vacate order and reinstate probation." The State opposed the motion. On

December 7, 2004, the district court denied the motion. Volpicelli appealed, and this court dismissed the appeal as untimely filed.¹

On May 13, 2005, Volpicelli filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel to represent Volpicelli. The State filed a motion to dismiss the petition. On April 13, 2007, the district court denied Volpicelli's petition. Volpicelli filed this timely appeal.

Volpicelli argues that the district court erred in summarily denying his petition. In particular, Volpicelli argues that the district court should have considered the merits of his petition because he was "restrained of his liberty" when he was dishonorably discharged from probation. Additionally, Volpicelli argues that his constitutional right to due process of law was violated when the district court dishonorably discharged him from probation without first conducting a hearing.

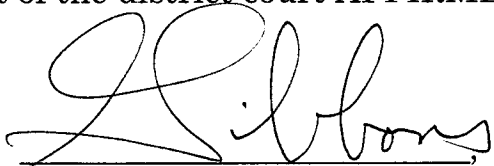
This court has held that a defendant who has completed his sentence may not thereafter seek habeas corpus relief from that conviction.² Here, the record indicates that Volpicelli completed the sentence imposed for the 1998 conviction in January 2004, when he was dishonorably discharged from probation. Volpicelli's habeas petition was not filed in the district court until May 2005, well after Volpicelli had completed serving his sentence. Therefore, the district court did not err in summarily denying Volpicelli's petition.

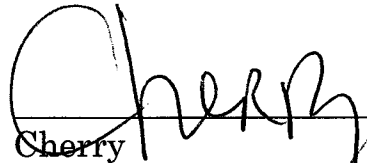
¹Volpicelli v. State, Docket No. 44556 (Order Dismissing Appeal, March 4, 2005).


²Jackson v. State, 115 Nev. 21, 973 P.2d 241 (1999).

Having considered Volpicelli's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Robert H. Perry, District Judge
Scott W. Edwards
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk
Ferrill Joseph Volpicelli

³Because Volpicelli is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action and shall not consider the proper person documents Volpicelli has submitted to this court in this matter.