

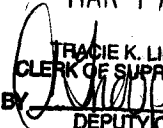
IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER D. KYRIACOU,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49584

FILED

MAR 17 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE AND DIRECTING CORRECTION OF THE
JUDGMENT OF CONVICTION

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; Lee A. Gates, Judge.

On February 9, 1998, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to commit robbery and/or murder (count 1); one count of robbery (count 2); and one count of first-degree murder (count 3). The district court sentenced appellant to serve the following terms in the Nevada State Prison: (1) for count 1, which the court indicated was the conspiracy count, a term of 40 to 180 months; (2) for count 2, which the court indicated was the first-degree murder count, a term of life with the possibility of parole, to run concurrent with count 1; (3) for count 3, which the court indicated was the

robbery count, a term of 26 to 120 months, to run concurrent with the former and consecutive to the first.¹ Appellant did not file a direct appeal.

On January 31, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that the petition was procedurally barred. Moreover, the State specifically pleaded laches. 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 May 16, 2007, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition almost nine years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.³ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁴

In an attempt to excuse his procedural defects, appellant argued that his counsel failed to inform him regarding his right to an appeal and failed to file a notice of appeal even after appellant expressed "his great dissatisfaction with his conviction and sentence." Appellant's claims regarding notice of his right to file an appeal and his attorney's

¹An Amended Judgment of Conviction was entered on June 4, 1998, but appellant's sentence was not altered.

²See NRS 34.726(1).

³See NRS 34.726(1).

⁴See NRS 34.800(2).

failure to file an appeal were reasonably available during the statutory period, and thus are not cause for his delay in filing.⁵ Furthermore, appellant failed to overcome the presumption of prejudice to the State. Therefore, we conclude that the district court did not err in determining appellant's petition was procedurally barred.

In reviewing this appeal, this court observed what appeared to be clerical errors in the judgment of conviction. Specifically, it appears that the district court incorrectly indicated that count 2 was appellant's murder count when it pronounced appellant's sentence, when appellant's murder count was actually count 3.⁶ Moreover, the district court inadvertently switched appellant's sentences for conspiracy and robbery. Notably, conspiracy to commit murder carries a sentence of 2 to 10 years and robbery carries a sentence of 2 to 15 years.⁷ In appellant's judgment of conviction, however, the district court sentenced appellant to serve a term of 40 to 180 months for conspiracy to commit murder and a term of 26 to 120 months for robbery. Finally, it should be noted that the district court specifically sentenced appellant to serve his sentence for robbery concurrently with his sentence for first-degree murder and consecutively with his sentence for conspiracy to commit murder. We therefore direct

⁵Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).


⁶This error notwithstanding, appellant's sentence for first-degree murder was within the limits prescribed by statute. See 1995 Nev. Rev. Stat., ch. 168, § 1, at 257, ch. 443, § 44, at 1181 (NRS 200.030); 1989 Nev. Rev. Stat., ch. 282, § 9, at 589 (NRS 200.010).

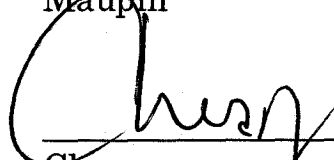
⁷1995 Nev. Rev. Stat., ch. 443, § 39, at 1179-80 (NRS 199.480); NRS 200.380.

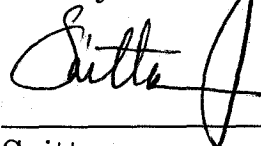
the district court to enter a corrected judgment of conviction as follows: 1) correct the judgment of conviction to reflect that appellant's first-degree murder charge is count 3; 2) correct appellant's sentence for conspiracy to reflect that his sentence on that count is a term of 26 to 120 months; 3) correct appellant's sentence for robbery to reflect that his sentence on that count is a term of 40 to 180 months; 4) and indicate that appellant's sentence for robbery is to run consecutively with appellant's sentence for conspiracy and concurrently with appellant's sentence for first-degree murder.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED and Directing Correction of the Judgment of Conviction.


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

⁸See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Lee A. Gates, District Judge
Christopher D. Kyriacou
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk