

.IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY ERNST GOETZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49809

FILED

MAR 27 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

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. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On July 30, 1998, the district court convicted appellant, pursuant to a guilty plea, of three counts of lewdness with a child under the age of fourteen years. The district court sentenced appellant to serve three consecutive prison terms of 24 to 62 months and then suspended execution of the sentence, placing appellant on probation for a time period not to exceed 5 years. Appellant did not file a direct appeal. On June 11, 1999, the district court entered an order revoking appellant's probation.

On May 5, 2004, appellant filed a motion to modify a sentence pursuant to NRS 176A.630(5) and to request a hearing in the district court. The district court denied this motion on June 25, 2004, and this

court affirmed the denial on appeal.¹ On July 20, 2004, appellant filed a motion for reconsideration, and on December 7, 2005, appellant filed a supplement to the motion for reconsideration and amendment for alternative judgment. On May 17, 2006, the district court denied the motion for reconsideration, and this court dismissed the subsequent appeal.²

On April 16, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 14, 2007, the district court denied appellant's petition. This appeal followed.

To the extent that appellant's petition could be characterized as challenging the validity of the judgment of conviction and sentence, we conclude that the district court did not err in denying the petition. Appellant filed his petition approximately 9 years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of

¹Goetz v. State, Docket No. 43636 (Order of Affirmance, January 7, 2005).

²Goetz v. State, Docket No. 47384 (Order Dismissing Appeal, July 10, 2006).

³See NRS 34.726(1).

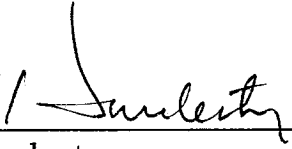
cause for the delay and prejudice.⁴ In an attempt to demonstrate cause for the delay, appellant argued that he initially had no cause to appeal the judgment of conviction because he sought and received probation. However, probation revocation is not good cause necessary to overcome the procedural bar.

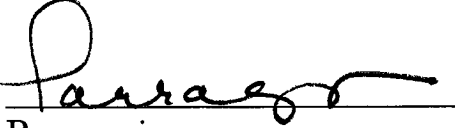
To the extent that appellant's petition could be characterized as a challenge to the revocation of the probation, we conclude the district court did not err in denying the petition. Appellant filed his petition approximately 8 years after the revocation of his probation. Pursuant to NRS 34.800(1)(a), a petition may be dismissed if delay in the filing prejudices the State in responding to the petition, unless the petitioner showed "that the petition is based upon grounds which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the State occurred." While appellant contended that his counsel informed him that he could not appeal the probation revocation, appellant failed to establish that his petition was based upon grounds which he could not have knowledge of by the exercise of reasonable diligence before now. Accordingly, the district court did not err in denying the petition.

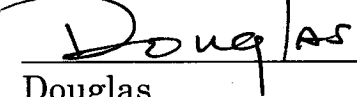
⁴See id.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Janet J. Berry, District Judge
Wesley Ernst Goetz
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁵See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We 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.