

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW A. DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51723

FILED

AUG 18 2009

ORDER OF AFFIRMANCE

FRANIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

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; David Wall, Judge.

On April 4, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary while in possession of a firearm and six counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a total of six consecutive terms of 24 to 84 months in the Nevada State Prison. No direct appeal was taken.

On January 9, 2007, appellant 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 denied the petition. This court affirmed the order of the district court on appeal. Davis v. State, Docket No. 49451 (Order of Affirmance, October 3, 2007).

On February 4, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed 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 July 3, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his sentence for the burglary charge violated double jeopardy because a deadly weapon enhancement term was applied contrary to NRS 193.165, which excludes enhancing an offense where a deadly weapon is a necessary element. Appellant claimed that a jury should have determined whether he had possession of a firearm when he committed burglary. Appellant claimed that the sentence was illegal and the district court lacked jurisdiction because of these errors.

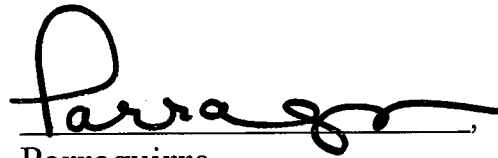
Appellant filed his petition almost two years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was an abuse of the writ because he filed new and different claims from those litigated in the 2007 petition. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

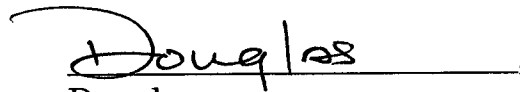
Appellant did not attempt to demonstrate good cause for the delay or raising the claims in a second petition. Instead, appellant argued that a jurisdictional claim could be raised at any time. Appellant's jurisdictional claim was patently without merit. Appellant failed to demonstrate that the alleged errors amounted to a jurisdictional defect. Further, to the extent that appellant claimed that his sentence was illegal, appellant's claim was without merit. See Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996). The burglary charge was not enhanced pursuant to NRS 193.165. Appellant entered a guilty plea to using a firearm during the burglary; thus, the district court properly imposed the enhanced

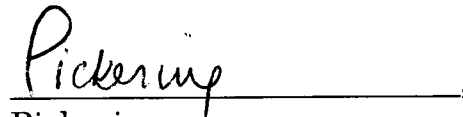
penalty for burglary pursuant to NRS 205.060(4). Blakely v. Washington, 542 U.S. 296 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant). Therefore, we conclude that the district court did not err in denying the petition as procedurally barred 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. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. David Wall, District Judge
Matthew A. Davis
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk