

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD EDWARD BREEN,

No. 34696

Appellant,

vs.

WARDEN, NEVADA STATE PRISON, JOHN
IGNACIO,

Respondent.

FILED

AUG 30 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Schaefer*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus.

On February 13, 1980, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of four years in the Nevada State Prison. The district court ordered the sentences to run concurrently with a five year sentence that appellant was then serving in the Oklahoma State Prison on other charges. Appellant did not file a direct appeal.

On April 4, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant was discharged from his Nevada sentences prior to filing his petition on April 4, 1999. The State filed a motion to dismiss the petition arguing that the petition should be dismissed because appellant had completed his Nevada sentence. See NRS 34.360 (only persons committed, detained, confined or restrained of their liberty may prosecute a writ of habeas corpus). 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 August 5, 1999, the district court dismissed appellant's petition. This appeal followed.

We conclude that the district court did not err in denying appellant's petition. See NRS 34.360; see also Jackson

v. State, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999) (petitioner's "present confinement for another conviction does not alter the jurisdictional requirement of the Nevada Constitution that a petitioner must not have completed service of the sentence for the conviction he seeks to challenge"). Appellant had completed serving his Nevada sentences by the time he filed his habeas corpus petition. Therefore, appellant was not in custody or otherwise restrained of his liberty by the state of Nevada at the time he filed his habeas corpus petition.

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), cert. denied, 423 U.S. 1077 (1976). Accordingly, we

ORDER this appeal dismissed.

Young J.
Young
Agosti J.
Agosti
Leavitt J.
Leavitt

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
Donald Edward Breen
Washoe County Clerk