

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARVIEZ V. ALEXANDER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52183

**FILED**

FEB 19 2009

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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On January 4, 1995, the district court convicted appellant, pursuant to a guilty plea, of one count of first-degree kidnapping with the use of a deadly weapon and four counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling two hundred and ten years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction. Alexander v. State, Docket No. 26624 (Order Dismissing Appeal, October 22, 1996). The remittitur issued on November 12, 1996.

On May 30, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On July 29, 1997, the district court, without appointing counsel or conducting an evidentiary hearing, denied appellant's petition. On appeal, this court concluded that the district court erred in denying the petition without first conducting an evidentiary hearing on appellant's claim that trial counsel misinformed him about his ability to withdraw his guilty plea, and consequently, this court remanded

the matter to the district court for an evidentiary hearing. Alexander v. State, Docket No. 29134 (Order of Remand, March 11, 1999). Upon remand, the district court appointed counsel and conducted an evidentiary hearing. The district court entered a final order denying the petition, and this court dismissed the subsequent appeal. Alexander v. State, Docket No. 35153 (Order Dismissing Appeal, April 12, 2000).

In addition, appellant has unsuccessfully sought relief from his judgment of conviction by way of a motion to correct an illegal sentence, petition for a writ of error coram nobis, and motion for sentence modification. Alexander v. State, Docket No. 48149 (Order of Affirmance, March 27, 2007); Alexander v. State, Docket No. 46642 (Order of Affirmance, June 12, 2006); Alexander v. State, Docket No. 45385 (Order of Affirmance, September 26, 2005).

On April 3, 2008, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition as procedurally time barred. The State further specifically pleaded laches. Appellant filed a reply. 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 26, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant claimed that: (1) the district court and the Nevada Supreme Court denied him the right to petition the government for redress of grievances in the first post-conviction proceedings; (2) the district court and the Nevada Supreme Court denied him due process and equal protection in the first post-conviction proceedings; and (3) 2007 legislative amendments to NRS 209.4465 cause inmates whose credits are calculated under NRS 209.446 to be treated differently in violation of equal protection.

Preliminarily, we note that appellant's petition raised claims inappropriate to a post-conviction petition for a writ of habeas corpus. NRS 34.810(1)(a) requires the district court to dismiss a post-conviction petition for a writ of habeas corpus if the court determines that the "conviction was upon a plea of guilty . . . and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel." Thus, the first two claims set forth above were properly denied as they did not challenge the validity of the guilty plea or the effective assistance of counsel.

Second, we note that appellant's challenge to the computation of time served was improperly raised in the instant petition. A post-conviction petition for a writ of habeas corpus may not raise claims that challenge both the validity of the judgment of conviction and the computation of time served. NRS 34.738(3). Thus, the district court properly determined that the computation of time served claim was inappropriately raised in the April 3, 2008 petition.

Finally, to the extent that appellant was challenging the validity of his judgment of conviction and sentence, appellant's petition was procedurally barred. Appellant filed his petition more than eleven years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2). A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice. Mazzan v. Warden, 112 Nev. 838,

842, 921 P.2d 920, 922 (1996). In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence of the crime. Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

In an attempt to excuse his procedural defects, appellant argued that he should be permitted to challenge the first post-conviction proceedings because he was purportedly not appointed counsel and the district court purportedly did not conduct an evidentiary hearing. Appellant claimed that irregularities in the first post-conviction proceedings constituted a fundamental miscarriage of justice.

Based upon our review of the record on appeal, we conclude the district court did not err in denying the petition as procedurally barred. Appellant failed to demonstrate good cause as he failed to demonstrate that an impediment external to the defense excused his procedural defects. See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003). Any alleged irregularities in the first post-conviction proceedings are not good cause for the instant petition, and notably, appellant's claims regarding the failure to appoint counsel and the failure to conduct an evidentiary hearing are belied by the record on appeal. Further, any irregularities did not constitute a fundamental miscarriage of justice. Finally, appellant failed to overcome the presumption of prejudice to the State.

As set forth earlier, appellant has filed a number of post-conviction challenges. Appellant is cautioned that an inmate may have statutory good time credit forfeited if the inmate, in a civil action, submits a pleading or other document to the court that:

- (1) Contains a claim or defense that is included for an improper purpose, including, without limitation, for the purpose of harassing

his opponent, causing unnecessary delay in the litigation or increasing the cost of the litigation;

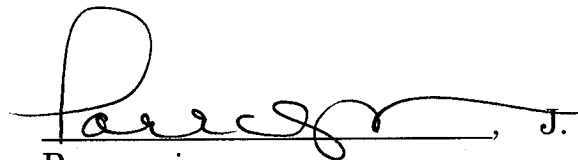
(2) Contains a claim, defense or other argument which is not warranted by existing law or by a reasonable argument for a change in existing law or a change in the interpretation of existing law; or

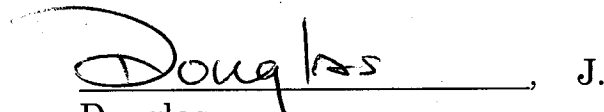
(3) Contains allegations or information presented as fact for which evidentiary support is not available or is not likely to be discovered after further investigation.

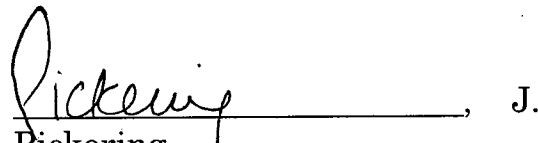
See NRS 209.451(1)(d). A post-conviction petition for a writ of habeas corpus is a civil action for the purposes of NRS 209.451. See NRS 209.451(5).

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: Eighth Judicial District Court Dept. 15, District Judge  
Narviez V. Alexander  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk