

IN THE SUPREME COURT OF THE STATE OF NEVADA

APRIL JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52940

FILED

SEP 25 2009

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

ORDER OF AFFIRMANCE

This is a proper person appeal of an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On October 3, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to commit murder, seven counts of attempted murder with the use of a deadly weapon, one count of stop required on the signal of a police officer, and one count of possession of stolen property. The district court sentenced appellant to serve a total of two consecutive terms of 84 to 240 months in the Nevada State Prison. Appellant did not file a direct appeal.

On February 24, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent appellant. The State opposed the petition. Pursuant to 34.770, the district court declined to conduct an evidentiary hearing. On November 28, 2006, the district court denied appellant's petition. This court affirmed the order of the district court on appeal. Jones v State, Docket No. 48688 (Order of Affirmance, April 6, 2007).

On July 14, 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 December 9, 2008, the district court denied appellant's petition. This appeal followed.

In her petition, appellant raised 9 claims in the petition below: (1) trial counsel was ineffective for coercing appellant's family into pressuring her to plead guilty; (2) trial counsel was ineffective for coercing appellant to plead guilty; (3) trial counsel was ineffective for not explaining the guilty plea agreement and agreement to testify to her; (4) trial counsel was ineffective for failing to explain the deadly weapon enhancement; (5) trial counsel was ineffective for failing to investigate or present all facts and evidence at trial; (6) the district court erred by allowing her to plead guilty when she did not receive a bargain; (7) the district court erred in her previous post-conviction petition by failing to hold an evidentiary hearing; (8) the changes made in 2007 to NRS 193.165 should be applied retroactively to her case; and (9) her statutory good time credits were being incorrectly calculated.

Appellant filed her petition approximately 3 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 successive because she had previously filed a post-conviction petition and claims 1, 2, and 7 above were raised in that petition. See NRS 34.810(2). Further, appellant's petition constituted an abuse of the writ as several of her claims, claims 3, 4, 5, 6, 8 and 9, were new and different from those claims raised in her previous post-conviction petition. See id. Appellant's petition was procedurally barred absent a demonstration of good cause

and prejudice. See NRS 34.726(1); NRS 34.810(3). To show good cause, a petitioner must demonstrate that an impediment external to the defense prevented her from complying with the procedural default rules. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Such an impediment “may be demonstrated by a showing ‘that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable.’” Id. (internal quotation marks omitted) (quoting Murray v. Carrier, 477 U.S. 478, 488 (1986)).

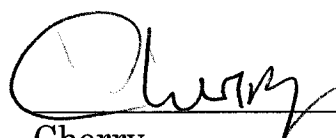
In an attempt to excuse her procedural defects, appellant appeared to claim that her petition was timely filed. Appellant claimed that her petition was timely filed from this court’s order of affirmance on her previous post-conviction petition. In this case, because appellant did not file a direct appeal, appellant was required to file her petition within one year of the judgment of conviction. See NRS 34.726(1). Appellant filed the instant petition approximately 3 years after her judgment of conviction was filed. The filing of a previous habeas corpus is not good cause for a late petition. Therefore, the district court did not err in denying this claim.

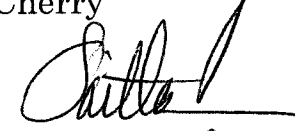
Next, to the extent that appellant claimed that she had good cause because of the 2007 amendments to NRS 193.165, the 2007 amendments did not provide good cause in the instant case. The 2007 amendments to NRS 193.165 do not apply retroactively, but rather apply only to those offenses committed after July 1, 2007. See State v. Dist. Ct. (Pullin), 124 Nev. ___, 188 P.3d 1079, 1081 (2008). Because the amendments do not apply, they do not provide good cause in this case. Therefore, the district court did not err in denying this claim.

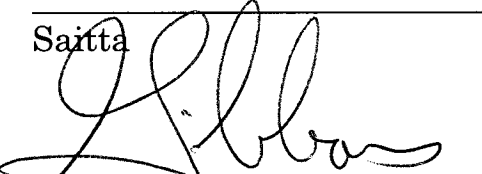
Finally, to the extent that appellant challenged the alleged error of the Department of Corrections in calculating her statutory good time credits, we conclude that the district court did not err in denying that portion of the petition. A challenge to the computation of statutory good time credits may not be raised in a petition challenging the validity of the judgment of conviction and sentence. NRS 34.738(3). Therefore, we affirm the order of the district court denying the petition as procedurally barred.

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.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Eighth Judicial District Court Dept. 8, District Judge
April Jones
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk