

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWIN HUMBERTO ARTIGA,
Appellant,
vs.
WARDEN, SOUTHERN DESERT
CORRECTIONAL CENTER, BRIAN
WILLIAMS,
Respondent.

No. 53186

FILED

JUL 31 2009

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing appellant Edwin Humberto Artiga's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On February 22, 2007, the district court convicted Artiga, pursuant to a guilty plea, of one count of felony driving under the influence. The district court sentenced Artiga to serve a prison term of 24 to 80 months. Artiga did not file a direct appeal.

On June 24, 2008, Artiga filed a proper person post-conviction petition for a writ of habeas corpus in the Washoe County District Court. In the petition, Artiga asserted that he was imprisoned in Clark County and that he was challenging the computation of time that he has served pursuant to NRS 34.724(2)(c). The district court appointed counsel to represent Artiga. Counsel subsequently filed a supplemental petition, in which she raised three claims of ineffective assistance of counsel and requested declaratory relief.

On October 21, 2008, the State filed a motion for partial dismissal. The State asserted that Artiga's petition and supplemental

petition improperly challenged both the validity of the judgment of conviction or sentence and the computation of time in violation of NRS 34.738(3). Artiga opposed the motion and the State filed a reply. Thereafter, the district court dismissed the claims of ineffective assistance of counsel pursuant to NRS 34.726(1), dismissed the claim challenging the computation of time pursuant to NRS 34.738(3), and instructed Artiga “to file a proper person petition for a writ of habeas corpus in Clark County to correct any alleged errors of good time and work time credits.” This appeal followed.

Claims Challenging the Validity of the Judgment of Conviction

Artiga contends that the district court abused its discretion by dismissing the portion of his petition that challenges the validity of the judgment of conviction, specifically, his three claims of ineffective assistance of counsel.

Artiga’s petition was filed more than one year after the district court entered its judgment of conviction. Thus, to the extent that it challenges the validity of the judgment of conviction, Artiga’s petition was untimely. See NRS 34.726(1). Artiga’s petition was procedurally barred absent a demonstration of good cause for the delay and undue prejudice. See id. To show good cause, Artiga had to demonstrate that an impediment external to the defense prevented him from complying with procedural default rules. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

In an attempt to excuse his procedural defect, Artiga argued that the district court “has jurisdiction to review this action due to the constitutional nature of the claims raised as well as due to the Petition for Declaratory Relief requested herein.”

The district court determined that neither the petition nor the supplemental petition alleged good cause for the untimely ineffective assistance of counsel claims and that the petition for declaratory relief could not be used as a basis to consider the untimely claims. We note that Artiga has not shown that an impediment external to the defense prevented him from raising these claims in a timely manner, and further, that Artiga sought declaratory relief to remedy the alleged failure of the prison to properly calculate credits for good time and work time—not to remedy the alleged ineffective assistance of counsel. We conclude that the district court did not abuse its discretion in determining that Artiga failed to show good cause for the delay. See Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (holding that a lower court’s determination regarding the existence of good cause will not be disturbed absent a clear abuse of discretion).

Claim Challenging the Computation of Time


Artiga contends that the district court abused its discretion by dismissing the portion of his petition that challenges the computation of time, specifically, the prison’s calculations of his good time and work time credits. Artiga asserts that “[t]his issue was properly before the district court for decision. Yet, the district court ducked the issue by dismissal on procedural grounds.”


The record on appeal reveals that Artiga was convicted in Washoe County and is incarcerated in Clark County. Artiga improperly challenged the computation of time in a petition filed in the Washoe County District Court, see NRS 34.738(1), and he improperly challenged both the validity of a judgment of conviction and the computation of time in the same petition, see NRS 34.738(3). As required by NRS 34.738(3),


the Washoe County District Court resolved the portion of Artiga's petition that challenged the validity of the judgment of conviction and dismissed the reminder of the petition without prejudice. Under these circumstances, Artiga has not demonstrated that the district court abused its discretion.

Having considered Artiga's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Karla K. Butko
Attorney General Catherine Cortez Masto/Carson City
Washoe District Court Clerk