

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED MARK DOLLAR,

No. 34848

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**AUG 08 2001**

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

ORDER OF AFFIRMANCE

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

On April 19, 1996, the district court convicted appellant, pursuant to a guilty plea, of one count of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve a minimum term of forty-two months to a maximum term of one hundred and twenty months for voluntary manslaughter, with an equal and consecutive term for the use of a deadly weapon. Appellant did not file a direct appeal.

On September 6, 1996, appellant filed a motion to correct an illegal sentence challenging the deadly weapon enhancement. The State opposed the motion. On October 14, 1996, the district court denied the motion. This court dismissed appellant's appeal from that order.<sup>1</sup>

On June 22, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, in part, on the ground that the petition was not verified and did not contain the information required by NRS 34.735. Appellant

<sup>1</sup>Dollar v. State, Docket No. 29472 (Order Dismissing Appeal, December 28, 1998).

01-13402

filed a reply, restating his claims, verifying the petition, and providing the previously omitted information. 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 September 10, 1999, the district court denied appellant's petition. This appeal followed.

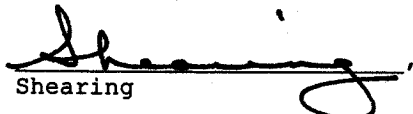
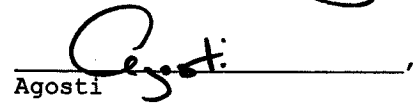
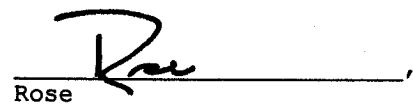
The district court denied appellant's petition because the petition was not verified and failed to provide the information required by NRS 34.735. The district court further concluded that the claim had been previously raised and rejected in appellant's motion to correct an illegal sentence. Our review of the record on appeal reveals that the district court erred in denying appellant's petition for the reasons stated in the district court's order. Although appellant did not verify his June 22, 1999 habeas corpus petition, appellant verified the petition and the claim raised in the petition in his July 23, 1999 reply to the State's opposition. Appellant also provided the previously omitted information. The district court's September 10, 1999 order denying appellant's petition stated that the district court had considered all documents on file. Therefore, appellant's petition was properly verified and contained the necessary information required by NRS 34.735. Further, although the claim had been raised in appellant's motion to correct an illegal sentence, this court dismissed appellant's appeal from the denial of that motion because his claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. Therefore, appellant's claim had not been previously decided on the merits. Thus, we conclude that the district court erred in denying appellant's petition for the reasons stated in the district court's order. Nevertheless, we conclude, for the reasons discussed below that the district

court reached the correct result in denying appellant's petition.

Appellant filed his petition more than three years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>3</sup> Appellant failed to allege any cause for the delay. Therefore, we conclude that appellant's petition was procedurally barred, and we affirm the decision of the district court denying appellant's 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.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Shearing J.  
  
Agosti J.  
  
Rose J.

cc: Hon. Ronald D. Parraguirre, District Judge  
Attorney General  
Clark County District Attorney  
Alfred Mark Dollar  
Clark County Clerk

<sup>2</sup>See NRS 34.726(1).

<sup>3</sup>See *id.*

<sup>4</sup>See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).