

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWNEE DONTELL ALLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53613

FILED

NOV 05 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; David B. Barker, Judge.

On April 13, 2005, 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 two consecutive terms of 36 to 90 months in the Nevada State Prison. No direct appeal was taken.

On December 16, 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 March 23, 2009, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that the sentence for the deadly weapon enhancement could not be imposed or be required to be

served consecutive to the sentence for the primary offense. Appellant believed that the sentences for the primary offense and the deadly weapon enhancement should have been treated as one single, continuous sentence. Thus, appellant sought immediate release.

Appellant filed his petition more than three years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See id.

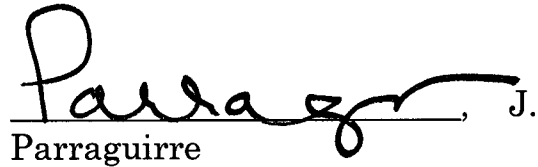
In an attempt to demonstrate cause for the delay, appellant argued that he could not have challenged the sentence for the deadly weapon enhancement until he began to serve it upon expiration of the sentence for the primary offense.

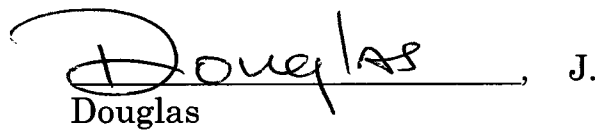
Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition. Appellant's claim challenging the imposition of a deadly weapon enhancement sentence was reasonably available during the time period for filing a timely post-conviction petition for a writ of habeas corpus. Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003). To the extent that he was raising a claim challenging the computation of time served, appellant is required to serve a separate and consecutive sentence for the deadly weapon enhancement. NRS 193.165; Nevada Dep't. of Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1987). Therefore, we affirm the order of the district court denying the petition.

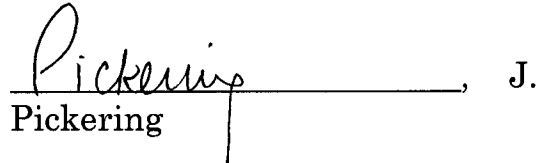
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. David B. Barker, District Judge
Shawnee Dontell Allen
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk