

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53779

FILED

OCT 28 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; Michelle Leavitt, Judge.

On August 14, 1996, the district court convicted appellant, by a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), of one count of sexual assault. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. No direct appeal was taken.

On February 19, 2009, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 February 26, 2009, the district court orally denied the petition, and on

May 29, 2009, the district court entered a written order denying the petition. This appeal followed.¹

In his petition appellant claimed: (1) the criminal complaint was defective because the justice court has no jurisdiction over a felony criminal complaint; (2) the information was untimely and defective because it arose from the defective criminal complaint; (3) the judgment of conviction set forth the incorrect date for the offense and this meant he was actually acquitted of committing a crime on the date set forth in the criminal complaint and the information; (4) his trial counsel was ineffective for failing to raise a jurisdictional argument based upon the allegedly defective criminal complaint and information; (5) his trial counsel was ineffective for failing to have him evaluated for competency; (6) his trial counsel was ineffective for failing to advise him of the weaknesses in the State's case; and (7) his trial counsel was ineffective for failing to investigate his background and present mitigating evidence.

Appellant filed his petition more than thirteen 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.

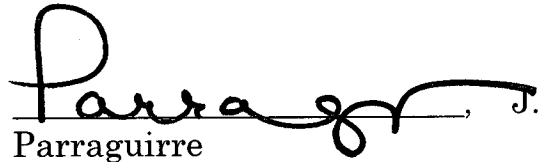
¹On March 23, 2009, appellant submitted an amended or supplemental petition. On May 1, 2009, the district court determined that the petition was not a proper amendment or supplement as the original petition had already been orally denied by the court. We conclude that the district court did not abuse its discretion in declining to permit the original petition to be amended or supplemented after it was denied. See NRS 34.750(5).

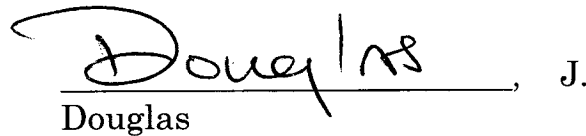
Appellant did not attempt to demonstrate good cause for the delay in filing his petition, although he appeared to argue that claims one and two presented jurisdictional issues that could be raised any time. Claims one and two are patently without merit and do not implicate the jurisdiction of the district court; thus, claims one and two do not overcome the procedural time bar. Nev. Const. art. 6, § 8 (setting forth that the Legislature shall determine the limits of the criminal jurisdiction of the justices of the peace); NRS 4.370(3) (providing that the justice courts have jurisdiction over “all misdemeanors and no other criminal offenses except as otherwise provided by specific statute”); NRS 171.196 (providing for a preliminary examination in the justice court); NRS 171.202 (providing that when the offense involves a felony or gross misdemeanor, the district attorney of the proper county shall be present and conduct the preliminary examination); NRS 171.206 (providing that the magistrate shall bind a defendant over to the district court if from the evidence presented there is probable cause to believe that an offense has been committed and the defendant has committed it); NRS 173.035(1), (3) (providing for the filing of an information in the district court when a defendant has been bound over after a preliminary examination before a justice of the peace and the information is filed within 15 days after the holding of the preliminary examination). The judgment of conviction contained a clerical error regarding the date of the offense.² Therefore, we affirm the order of the district court denying the petition as procedurally barred.

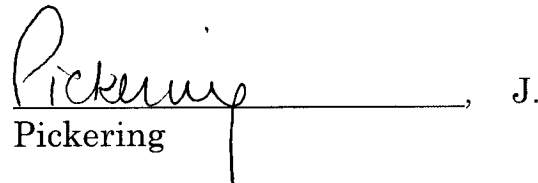
²A clerical error may be corrected pursuant to NRS 176.565.

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.


Parraguirre


Douglas


Pickering

cc: Hon. Michelle Leavitt, District Judge
Gary Lynn Lewis
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk