

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN FRANCIS ARPINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54355

JOHN FRANCIS ARPINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54796

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket No. 54355 is a proper person appeal from an order of the district court denying appellant's motion to correct illegal sentence. Docket No. 54796 is a proper person appeal from an order of the district court denying appellant's "addendum petition for writ of habeas corpus (post conviction)."¹ Eighth Judicial District Court, Clark County; Kathy A.

¹Because appellant challenged his conviction and sentence, we conclude that the district court properly construed the "addendum" as appellant's first post-conviction petition for writ of habeas corpus. See NRS 34.724(2)(b).

Hardcastle, Judge. We elect to consolidate these appeals for disposition.²
See NRAP 3(b).

Docket No. 54355

In his motion filed on June 4, 2009, appellant claimed that NRS 193.330 is unconstitutional and that his conviction violated his constitutional rights. Appellant's claims fell outside the scope of claims permissible in a motion to correct an illegal sentence. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Appellant's argument that his maximum sentence for attempted theft could not be more than one year in county jail was without merit. See NRS 205.0835(3); NRS 193.330(a)(4). We therefore conclude the district court did not err in denying this motion.

Docket No. 54796

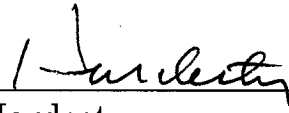
Appellant filed his petition on September 22, 2009, more than one year after the district court entered the judgment of conviction and sentence on April 7, 2008. Appellant's petition was therefore untimely filed and procedurally barred absent a demonstration of good cause and prejudice.³ See NRS 34.726(1). Appellant did not attempt to demonstrate

²These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

³Appellant's direct appeal was dismissed for lack of jurisdiction because it was untimely filed. Arpino v. State, Docket No. 53805 (Order Dismissing Appeal, June 22, 2009). The proper date to measure timeliness in this case is the entry of the judgment of conviction. See Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

good cause to excuse this procedural infirmity. We therefore conclude that the district court did not err in denying the petition. Accordingly, we

ORDER the judgments of the district court AFFIRMED.⁴


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Kathy A. Hardcastle, District Judge
John Francis Arpino
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.