IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES H. HILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54920

CHARLES H. HILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55071

FILED

MAY 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket No. 54920 is a proper person appeal from an order of the district court denying a motion to modify or correct an illegal sentence.[1] Docket No. 55071 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 Wall, Judge. We elect to consolidate these appeals for disposition.[2] NRAP 3(b).

[1]The district court also denied appellant's motion to appoint counsel and motion for an evidentiary hearing. We conclude that the district court did not abuse its discretion in denying these motions.

[2]These 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).

Docket No. 54920

In his motion filed on September 29, 2009, appellant appeared to claim that the district court mistakenly relied on two convictions for aggravated assault with a deadly weapon in sentencing appellant to life without the possibility of parole. Appellant provided records that he was instead convicted of one count of attempted aggravated robbery. We conclude that appellant failed to demonstrate that the district court relied upon any mistake about his criminal record that worked to his extreme detriment. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Appellant's sentence was facially legal, see 1977 Nev. Stat., ch. 430, § 82, at 864-65; 1977 Nev. Stat., ch. 585, § 1, at 1541-42; 1977 Nev. Stat., ch. 598, § 5, at 1627-28, and there is nothing in the record indicating that the district court was without jurisdiction to impose a sentence in this case. See Edwards, 112 Nev. at 708, 918 P.2d at 324. Therefore, the district court did not err in denying this motion.[3]

Docket No. 55071

Appellant filed his petition on September 24, 2009, nearly twenty-four years after his judgment of conviction was entered on June 19, 1985.[4] Thus, appellant's petition was untimely filed. See NRS 34.726(1).

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[3]Appellant also claimed that counsel was ineffective because he failed to object to his criminal history and because he failed to inform the district court that appellant was a paranoid schizophrenic. These claims were outside the scope of a motion to modify or correct an illegal sentence, and therefore, the district court did not err in denying these claims. See Edwards, 112 Nev. at 708, 918 P.2d at 324.

[4]Further, appellant's petition was filed over sixteen years after the effective date of NRS 34.726. 1991 Nev. Stat., ch. 44, § 5, at 75-76 and § 33, at 92 (Effective January 1, 1993).

Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See id. In addition, the State specifically pleaded laches and appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

In an attempt to overcome the procedural bars, appellant first claimed that his petition was timely because he pursued two appeals in 2009.[5] The notices of appeal in these cases were not timely from appellant's judgment of conviction, and therefore, the remittitur from the orders dismissing them did not start the time period for a timely post-conviction petition for a writ of habeas corpus. See Dickerson v. State, 114 Nev. 1084, 1086, 967 P.2d 1132, 1133 (1998).

Next, appellant claimed that he did not believe that he had the right to appeal or to file a post-conviction petition for a writ of habeas corpus and that when he realized he could, he did not have his file or transcripts. These claims do not demonstrate an impediment external to the defense. See Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995).

Appellant also claimed that his mental condition prevented him from filing a timely petition. Appellant failed to demonstrate that his mental condition affected his ability to file a timely petition. Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988). Further, appellant has filed several different motions and petitions in the district court since

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[5]Hill v. State, Docket No. 53311 (Order Dismissing Appeal, March 30, 2009); Hill v. State, Docket No. 53530 (Order Dismissing Appeal, April 21, 2009).

1999, and he failed to demonstrate good cause and prejudice as to why he did not file his petition in 1999.

Finally, appellant failed to rebut the presumption of prejudice to the State. Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. David Wall, District Judge
Charles H. Hill
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[6]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, 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.