

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELBERT M. GREENE A/K/A
DELBERT MARSHALL GREEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56013

DELBERT M. GREENE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56546

FILED

NOV 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying post-conviction petitions for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge. We elect to consolidate these appeals for disposition. See NRAP 3(b).

Docket No. 56013

Appellant filed his petition on February 18, 2010, more than four years after issuance of the remittitur on direct appeal on September 20, 2005. Greene v. State, Docket No. 43628 (Order of Affirmance, August

¹These 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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

24, 2005). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed several post-conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

To excuse the procedural bars, appellant claimed that he had good cause because an amended judgment of conviction was entered without jurisdiction, a sentencing hearing, or counsel, and the amended judgment of conviction increased his punishment. Pursuant to an order of this court, Greene v State, Docket No. 52584 (Order of Affirmance and Remand to Correct Judgment of Conviction, August 25, 2009), on September 3, 2009, the district court corrected a clerical error made in the first amended judgment of conviction. A clerical mistake in a judgment of conviction may be corrected at any time. NRS 176.565. Correction of a clerical error would not provide good cause in this case. Sullivan v. State, 120 Nev. 537, 540-41, 96 P.3d 761, 763-64 (2004). When the amended judgment of conviction was entered appellant did not have a right to counsel because the clerical correction did not implicate his substantial rights. Mempa v. Rhay, 389 U.S. 128, 134 (1967). Appellant was mistaken in his assertion that the correction of a clerical error amounted

²Greene v. State, Docket No. 45127 (Order of Affirmance, September 16, 2005); Greene v. State, Docket No. 52584 (Order of Affirmance and Remand to Correct Judgment of Conviction, August 25, 2009).

to a sentencing hearing. Further, appellant did not have a right to be present and he did not demonstrate prejudice from his absence. Gallego v. State, 117 Nev. 348, 367-68, 23 P.3d 227, 240 (2001). Appellant failed to demonstrate that the correction of a clerical error improperly increased his sentence. Therefore, appellant's claim was without merit.

Based on the foregoing, we conclude that the district court did not err in denying the petition as procedurally barred.

Docket No. 56546

Appellant filed his petition on May 13, 2010, more than four years after issuance of the remittitur on direct appeal on September 20, 2005. Greene v. State, Docket No. 43628 (Order of Affirmance, August 24, 2005). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed several post-conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.³ See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

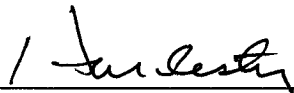
To excuse the procedural bars, appellant again claimed that the entry of the second amended judgment of conviction provided good cause because the district court violated his right to be present and his right to counsel at sentencing. As discussed previously, the second

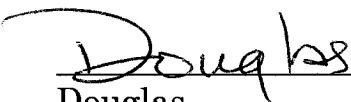
³Greene v. State, Docket No. 45127 (Order of Affirmance, September 16, 2005); Greene v. State, Docket No. 52584 (Order of Affirmance and Remand to Correct Judgment of Conviction, August 25, 2009).

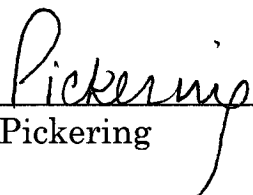
amended judgment of conviction was merely a correction of a clerical error; therefore, appellant failed to demonstrate good cause. Sullivan, 120 Nev. at 540-41, 96 P.3d at 763-64.⁴

Next, appellant claimed that he was deprived of a direct appeal from the amended judgment of conviction. Appellant did not demonstrate that he was deprived of a direct appeal from the amended judgment of conviction. Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998); Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506-07 (2003). Accordingly, we

ORDER the judgments of the district court AFFIRMED.⁵


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

⁴To the extent that appellant challenged his parole eligibility, claims of this nature must be brought in a petition filed in the county in which he is incarcerated. Nev. Const. art. 6, § 6(1); NRS 34.738(1).

⁵We 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.

cc: Hon. Valerie Adair, District Judge
Eighth District Court Clerk
Delbert M. Greene
Attorney General/Carson City
Clark County District Attorney