

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL P. MOTEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57786

FILED

APR 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Samuel P. Moten's post-conviction petition and supplemental petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Moten was convicted, pursuant to a jury verdict, of three counts of attempted murder with the use of a deadly weapon, two counts of discharging a firearm at or into a vehicle, and possession of a firearm by an ex-felon. This court affirmed the convictions on appeal and the remittitur issued on August 8, 2006. Moten v. State, Docket No. 44598 (Order of Affirmance, July 12, 2006). In this same matter, on May 17, 2007, Moten entered a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to one count of second-degree murder. Moten did not appeal from this conviction. Moten filed a post-conviction petition for a writ of habeas corpus on August 10, 2007, and a supplement to the petition on January 15, 2010. The district court conducted a limited evidentiary hearing and denied all claims on their merits. This appeal followed.

Moten claims that the district court erred by denying his claims that trial counsel was ineffective for failing to offer a lesser-

included offense instruction and properly investigate. Moten also claims that the district court erred by denying his claims that his appellate counsel was ineffective for failing to (1) challenge the sufficiency of the evidence supporting his convictions for attempted murder, (2) challenge the district court's failure to instruct the jury on a lesser-included or lesser-related offense, (3) challenge the giving of a flight instruction, and (4) raise proper issues on appeal. These untimely claims were procedurally barred absent a demonstration of good cause for the delay in filing the petition. See NRS 34.726(1); Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003) (defining good cause). Because Moten acknowledged that the petition was being filed more than one year following the judgment of conviction entered pursuant to the jury verdict or the issuance of the remittitur on direct appeal and he failed to allege any good cause to excuse the delay, the district court should have dismissed these claims as procedurally barred.¹ See 34.726(1); State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."); Hathaway, 119 Nev. at 252, 71 P.3d at 506. Further, Moten cannot demonstrate any undue prejudice from applying the procedural bar because, as the district court found, the claims lacked merit. See NRS 34.726(1)(b); Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005) (this court gives deference to the

¹We reject Moten's claim that the State waived application of the procedural bar by failing to raise the issue of the procedural bar in the district court. See generally State v. Haberstroh, 119 Nev. 173, 181, 69 P.3d 676, 682 (2003) ("[T]he parties in a post-conviction habeas proceeding cannot stipulate to disregard the statutory procedural default rules.").

district court's factual findings regarding ineffective assistance of counsel, but reviews the court's application of the law to those facts de novo); see also Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing a two-part test for evaluating claims of ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 987-88, 998, 923 P.2d 1102, 1107, 1114 (1996) (adopting the test in Strickland and applying the test to claims of ineffective assistance of appellate counsel). Therefore, we affirm the denial of these claims. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court may affirm a district court decision that reaches the correct result for the wrong reason).

Moten also claims that the district court erred by denying his claim that his counsel's failure to raise adequate issues on appeal from the judgment of conviction entered pursuant to the jury verdict rendered his guilty plea to second-degree murder invalid. This claim was raised within one year of entry of the judgment of conviction entered pursuant to his guilty plea, and therefore was timely raised. See NRS 34.726(1). The district court found that Moten's claim that his plea was not freely and voluntarily entered was belied by the record. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). We conclude that the district court's findings are supported by substantial evidence and not clearly erroneous, and Moten has not demonstrated that the district court erred as a matter of law. See Lader, 121 Nev. at 686, 120 P.3d at 1166; Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (we presume the district court "correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion").

We conclude that the district court did not err by denying Moten's petition and supplemental petition, and we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Stefany Miley, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk