IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD EUGENE MIDBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58527

FILED

FEB 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
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.[1] Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In his petition, appellant claimed that NRS 176.035 was vague and ambiguous because it allowed for the imposition of consecutive sentences in multiple judgments of conviction and that the district court lacked jurisdiction to run the sentence in the instant case consecutively to another district court case.[2] These claims fell outside the scope of claims

[1]This appeal has 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).

[2]Appellant originally filed a timely post-conviction petition for a writ of habeas corpus on April 16, 2010, but did not set forth any specific grounds for relief. No memorandum was filed contemporaneously with the petition. Rather, appellant filed a motion for stay of the proceedings so that he could obtain a copy of his case file. The district court granted the motion on June 16, 2010. A memorandum in support of the petition was filed on July 27, 2010. Appellant then filed another motion for stay of proceedings to obtain the case files. On September 14, 2010, the district

permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea.[3] NRS 34.810(1)(a). Moreover, as a separate and independent ground to deny relief, we conclude that appellant's claims lacked merit. NRS 176.035 is not impermissibly vague or ambiguous in granting authority to a district court judge to impose a subsequent sentence to be served consecutively to a sentence previously imposed, and nothing in NRS 176.035 limits its application to sentences within a single judgment of conviction.[4]

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court granted the motion, ordered the petition as originally filed vacated, and established filing deadlines for the petition. Appellant filed an amended petition on January 12, 2011, raising two grounds for relief and an additional claim in answer to question 14. Because the original petition was timely filed and the district court permitted the petition to be amended, the district court did not err in considering the grounds raised in the January 12, 2011 petition to be timely. NRS 34.726(1); NRS 34.750(5).

[3]To the extent that appellant challenged the Nevada Department of Corrections' structuring of his sentences, a challenge to the computation of time served may not be raised in a post-conviction petition for a writ of habeas corpus that also challenges the validity of the judgment of conviction and sentence. NRS 34.738(3). Thus, any challenge to the computation of time served was properly dismissed without prejudice for appellant to renew in a separately-filed petition.

[4]Any confusion in the sentence structure is engendered by NRS 213.1213, which provides instruction for how to determine the controlling sentence for parole eligibility when multiple concurrent sentences have been imposed. However, any issues arising from the application of NRS 213.1213 to appellant's four judgments of conviction involves a computation of time served and cannot be litigated in the instant petition. NRS 34.738(3).

In his petition, appellant also appeared to claim that his trial counsel was ineffective for failing to advise him he had a constitutional right to appeal his conviction and sentence. Appellant failed to demonstrate that he was prejudiced by any alleged deficiencies in representation as the written guilty plea agreement, which appellant acknowledged having read to him and understanding, informed appellant of the limited right to appeal the conviction. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland); see also Davis v. State, 115 Nev. 17, 19, 974 P.2d 658, 659 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[5]

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

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[5]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.

cc: Hon. Douglas W. Herndon, District Judge
Ronald Eugene Midby
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk