

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENE RODARTE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58560

FILED

JUN 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE


This is an 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; Elissa F. Cadish, Judge.


In his petition, filed on February 3, 2011, appellant claimed that he received ineffective assistance of trial counsel. The district court found, and appellant does not dispute, that appellant's sentence was discharged on January 8, 2007. Because appellant discharged his sentence prior to filing the instant post-conviction petition for a writ of habeas corpus, the petition was not cognizable. Jackson v. State, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999); Nev. Const. art. 6, § 6(1); NRS 34.360; NRS 34.724(1).

We therefore conclude that the district court did not err in denying the petition on the alternative ground that it was procedurally barred. Further, even if appellant's factual allegations are correct, he would not have been entitled to relief such that the district court did not

err in denying his request for an evidentiary hearing. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Elissa F. Cadish, District Judge
Xavier Gonzales
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹To the extent appellant argues that the district court erred in not construing his petition as a motion to withdraw guilty plea, we conclude that appellant's claim is without merit. The equitable doctrine of laches would have precluded consideration of the motion because there was a nearly six-year delay from entry of the judgment of conviction and an implied waiver exists from appellant's knowing acquiescence in existing conditions. See Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000).