

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER WAYNE ANGELO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58682

**FILED**

**FEB 08 2012**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Anderson*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a motion for additional credit for presentence time served.<sup>1</sup> Third Judicial District Court, Lyon County; David A. Huff, Judge.

In his motion, filed on March 17, 2011, appellant claimed that he was entitled to presentence credit for time he served in out-of-state confinement. A claim for presentence credits should be raised on direct appeal or in a timely post-conviction petition for a writ of habeas corpus. Griffin v. State, 122 Nev. 737, 744, 137 P.3d 1165, 1169 (2006). Thus, appellant's motion should have been construed as a post-conviction petition for a writ of habeas corpus. NRS 34.724(2)(c).

Appellant's petition was untimely because it was filed five years after issuance of the remittitur from his direct appeal.<sup>2</sup> NRS 34.726(1). Appellant's petition was also successive and an abuse of the

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<sup>1</sup>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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>2</sup>Angelo v. State, Docket No. 44388 (Order of Affirmance, January 12, 2006).

writ as he had previously filed a post-conviction petition for a writ of habeas corpus,<sup>3</sup> and the instant petition raises new claims. NRS 34.810(2). Appellant's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. NRS 34.726(1); NRS 34.810(3).

To the extent that appellant claimed that Griffin provided good cause to excuse his procedural bars, his argument was without merit. Griffin was decided July 13, 2006, and appellant failed to explain why he waited nearly five years to raise the claim. We therefore conclude that the district court did not err in denying his petition.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

Cherry, J.  
Cherry

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

<sup>3</sup>Angelo v. State, Docket No. 47960 (Order of Affirmance, January 8, 2007).

<sup>4</sup>Because this court has never reached the merits of appellant's claims, the district court erred in denying appellant's petition as barred by the doctrine of the law of the case. We nevertheless affirm the district court's decision for the reasons stated above. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

<sup>5</sup>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. David A. Huff, District Judge  
Christopher Wayne Angelo  
Attorney General/Carson City  
Lyon County District Attorney  
Lyon County Clerk