IN THE SUPREME COURT OF THE STATE OF NEVADA

CODY C. LEAVITT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59048

FILED

APR 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying in part appellant's post-conviction petition for a writ of habeas corpus.[1] Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

In his petition filed on May 13, 2011, appellant sought credit for time spent on house arrest.[2] The district court denied the request

[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).

To the extent that appellant challenged the denial of a motion for counsel, we conclude that the district court did not abuse its discretion in declining to appoint post-conviction counsel. NRS 34.750(1).

[2]Appellant also claimed that the presentence credit he was awarded was improperly computed as it did not include credit for the first day spent in confinement. The district court awarded him 3 additional days of credit to correct this computation error. NRS 34.724(2)(c). A challenge to the manner of computation is not subject to NRS 34.726.

because house arrest is not confinement pursuant to NRS 176.055. See State v. Dist. Ct. (Jackson), 121 Nev. 413, 418-19, 116 P.3d 834, 837 (2005). Based upon our review of the record on appeal, we conclude that the district court erred in reaching the merits of the claims raised in the petition because the petition was procedurally barred and application of the procedural bars is mandatory. State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Appellant's claim for additional presentence credit is a challenge to the validity of the judgment of conviction and sentence and such a claim is subject to the procedural time bar set forth in NRS 34.726(1).[3] See NRS 34.726(1) (providing that a petition that challenges the validity of the judgment of conviction and sentence must be filed within one year from entry of the judgment of conviction unless good cause is shown); Griffin v. State, 122 Nev. 737, 744, 137 P.3d 1165, 1169-70 (2006). Appellant's petition was untimely as it was filed more than two years after the entry of the judgment of conviction on January 24, 2009. NRS 34.726(1). The petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. Id. Appellant failed to present an argument that he had cause for the delay. Thus, the petition was procedurally barred, and we affirm the denial on this basis. See Wyatt v. State, 86 Nev. 294, 298, 468

[3]Additionally, appellant's petition was an abuse of the writ pursuant to NRS 34.810(2) as it raised claims new and different from those litigated in his prior post-conviction petition for a writ of habeas corpus. See Leavitt v. State, Docket No. 57195 (Order of Affirmance, March 7, 2012). Appellant did not provide a good cause statement for why he could not litigate this claim for additional presentence credits in his first timely petition.

P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. James M. Bixler, District Judge
Cody C. Leavitt
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[4]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.