

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS RAYMOND HOFFMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59949

FILED

DEC 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Douglas Raymond Hoffman's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Hoffman contends that the district court erred by not finding that trial counsel was ineffective for failing to (1) investigate and establish a viable defense, (2) present medical evidence indicating that he was physically incapable of committing the charged crime, and (3) object to inadmissible hearsay. Hoffman claims that the cumulative effect of trial and appellate counsel's errors requires the reversal of his conviction. Hoffman also claims that he is actually innocent and the district court erred by ruling that it did not have jurisdiction to consider his petition on the merits because his sentence expired prior to the filing of his petition. We conclude that Hoffman is not entitled to relief.¹

¹The State argues that this court lacks jurisdiction to consider Hoffman's appeal because the notice of appeal was untimely. Hoffman was not directly served with notice of entry of the district court's order filed on September 22, 2011, as required by NRS 34.830(2), see Lemmond v. State, 114 Nev. 219, 220-21, 954 P.2d 1179, 1180 (1998), therefore, the

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“[A] district court may not issue a writ of habeas corpus if the post-conviction petitioner filed the petition challenging the validity of a conviction after having completed the sentence for the challenged conviction.” Jackson v. State, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999); see also Nev. Const. art. 6, § 6(1); NRS 34.360; NRS 34.724(1) (“Any person convicted of a crime and under sentence of death or imprisonment who claims that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution of the United States or the Constitution or laws of this State . . . may . . . file a postconviction petition for a writ of habeas corpus.”). Here, Hoffman filed his petition more than a month after the expiration of his sentence and his claim that he meets the “in custody” requirement because he still owes over \$245,000 in restitution is without merit. See Maleng v. Cook, 490 U.S. 488, 491-92 (1989) (addressing federal “in custody” requirements necessary for filing habeas petition pursuant to 28 U.S.C. § 2254); Bailey v. Hill, 599 F.3d 976, 979 (9th Cir. 2010) (“Liability under a restitution order is ‘like a fine-only conviction’ and ‘is not a serious restraint on . . . liberty as to warrant habeas relief.’” (quoting Tinder v. Paula, 725 F.2d 801, 805 (1st Cir. 1984))); Mays v. Dinwiddie, 580 F.3d 1136, 1139 (10th Cir. 2009); Obado v. New Jersey, 328 F.3d 716, 718 (3d Cir. 2003); see also NRS 176.275 (“A judgment which imposes a fine or administrative assessment or requires a


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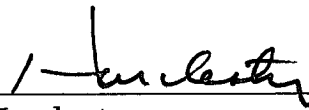
30-day period for filing a notice of appeal did not begin to run. As a result, we conclude that Hoffman’s notice of appeal, filed in the district court on December 20, 2011, after the district court denied his motion for reconsideration, was timely.

defendant to pay restitution or repay the expenses of a defense constitutes a lien in like manner as a judgment for money rendered in a civil action.”). Therefore, the district court properly determined that it lacked jurisdiction. Accordingly, we conclude that the district court did not err by denying Hoffman’s petition, and we

ORDER the judgment of the district court AFFIRMED.


Saitta, J.


Pickering, J.


Hardesty, J.

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