

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAVIER ALVAREZ-FRANCISCO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60253

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Anderson
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Javier Alvarez-Francisco's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Citing to Padilla v. Kentucky, 559 U.S. ___, 130 S. Ct. 1473 (2010), for support, Alvarez-Francisco contends that the district court erred by denying his petition because counsel was ineffective for failing to advise him about the immigration consequences of his guilty plea to grand larceny auto. Alvarez-Francisco also claims that (1) he had a viable defense and, but for counsel's failure, he would have insisted on going to trial; and (2) his petition was timely because "a Petition for Post Conviction Relief that addresses a Motion to Withdraw a Plea of Guilty . . . is subject only to the doctrine of laches" and not "the time constraints in NRS 34.726(1)."¹ We conclude that Alvarez-Francisco is not entitled to relief.

"[A] district court may not issue a writ of habeas corpus if the post-conviction petitioner filed the petition challenging the validity of a

¹Alvarez-Francisco does not claim, and there is no indication in the record, that he filed a motion to withdraw his guilty plea in the district court.

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). Here, an order honorably discharging Alvarez-Francisco from probation was filed in the district court on June 2, 2010. According to the district court docket entries, Alvarez-Francisco filed his habeas petition on November 4, 2011, seventeen months after the expiration of his probationary term.² As a result, the district court did not have jurisdiction to consider Alvarez-Francisco’s petition. Therefore, we conclude that the district court did not err by denying Alvarez-Francisco’s petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Parraguirre, J.
Parraguirre

²Alvarez-Francisco failed to provide us with any of the pleadings filed below, including, most importantly, his habeas petition. See Thomas v. State, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) (“Appellant has the ultimate responsibility to provide this court with ‘portions of the record essential to determination of issues raised in appellant’s appeal.’” (quoting NRAP 30(b)(3))).

³Although we filed the appendix submitted by Alvarez-Francisco, it fails to comply with the Nevada Rules of Appellate Procedure. The appendix is not paginated sequentially and does not include an alphabetical index. See NRAP 3C(e)(2)(C); NRAP 30(c). Counsel for Alvarez-Francisco, Xavier Gonzales, is cautioned that the failure to comply with the appendix requirements in the future may result in the documents being returned to be correctly prepared and in the imposition of sanctions, NRAP 3C(n).

cc: Hon. Michelle Leavitt, District Judge
Xavier Gonzales
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk