

IN THE SUPREME COURT OF THE STATE OF NEVADA

LONNIE JAY LOUCKS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 60361

**FILED**

NOV 14 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Malone*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

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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).

Appellant also appeals purported orders of the district court denying a motion to proceed in forma pauperis, a motion to correct an illegal sentence, a motion to amend, and a motion for the appointment of counsel. The record on appeal does not indicate that the district court issued any such orders, and appellant has thus failed to designate any appealable orders. Further, the record on appeal does not indicate that a motion to amend was filed, and the district court implicitly granted the motion to proceed in forma pauperis in its order denying the post-conviction habeas petition such that appellant was not an aggrieved party. Finally, no statute or court rule permits an appeal from an order denying a motion to appoint counsel. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). To the extent the district court implicitly denied the motion in its order denying the post-conviction habeas petition, and to the extent any such denial could be construed as an intermediate order from which appeal is possible, see NRS 2.090, we conclude that the district court did

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Appellant filed his habeas petition on November 15, 2011, at least four months after the expiration of his sentence. 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).

Moreover, as a separate and independent ground to deny relief, appellant filed his petition more than three years after the filing of his judgment of conviction on August 1, 2008.<sup>2</sup> Appellant's petition was therefore untimely filed and, accordingly, was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See NRS 34.726(1). Appellant claimed that NRS 176.555 provided cause to excuse the delay, but appellant's argument was without merit because his sentence was facially legal. See NRS 201.210; NRS 193.130. Further, we note that at the plea canvass, trial counsel represented that appellant's

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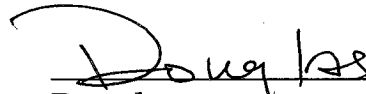
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not abuse its discretion in denying the motion, see NRS 34.750(1). For the foregoing reasons, we lack jurisdiction over these portions of the appeal.

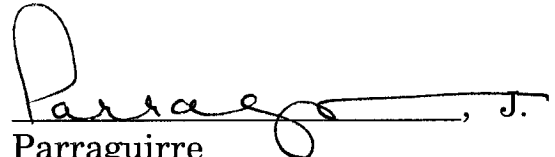
<sup>2</sup>No direct appeal was taken.

plea—which acknowledged a prior conviction—was a legal fiction. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Valerie Adair, District Judge  
Lonnie Jay Loucks  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</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.

The post-conviction habeas petition represents appellant's third attempt to raise the underlying issue in this district court case. See Loucks v. State, Docket No. 57549 (Order Dismissing Appeal, March 18, 2011); Loucks v. State, Docket No. 58729 (Order of Affirmance, January 12, 2012). Appellant has also raised the same underlying issue in at least one other case before the district court. See Loucks v. State, Docket No. 60001 (Order of Affirmance, September 13, 2012). Appellant is cautioned that statutory credits may be forfeited in the sentence he is currently serving if he files frivolous documents in a civil action. NRS 209.451.