

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIO ERNESTO ALMENDAREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61830

FILED

SEP 19 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a motion for credit against sentence and for an amended judgment of conviction.¹ Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

In his motion, filed on August 23, 2012, appellant claimed that he was entitled to additional presentence credit for time served. 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).

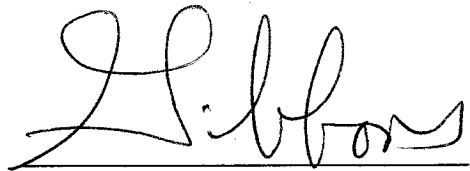
Appellant's motion was untimely because it was filed four years after issuance of the remittitur from his direct appeal on July 8,

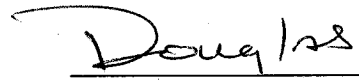
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).


2008.² NRS 34.726(1). Appellant's petition was also an abuse of the writ because the instant petition raised a claim different from those raised in his prior post-conviction petitions for a writ of habeas corpus.³ 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). Appellant did not attempt to demonstrate good cause to excuse his delay, nor could he have demonstrated prejudice because he received all of the presentence credit to which he was entitled. We therefore conclude that the district court did not err in denying the petition.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

²See *Almendarez v. State*, Docket No. 49861 (Order of Affirmance, June 9, 2008).

³See *Almendarez v. State*, Docket No. 56288 (Order Dismissing Appeal, July 15, 2010). No appeal was taken from the denial of appellant's second post-conviction habeas petition, filed on September 28, 2010.

cc: Hon. Jennifer P. Togliatti, District Judge
Julio Ernesto Almendarez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk