

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN JACOBO GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62119

FILED

JUL 23 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. 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.¹ Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant filed his petition on July 13, 2012, more than five years after the issuance of the remittitur from appellant's direct appeal filed pursuant to *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994), on June 27, 2007.² Thus, appellant's petition was untimely filed. See NRS

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).

²*Garcia v. State*, Docket No. 47059 (Order Affirming in Part and Reversing in Part and Remanding, May 31, 2007). Following that decision, the district court entered an amended judgment of conviction on December 3, 2007. Appellant did not file a direct appeal challenging the amended judgment of conviction.

34.726(1); *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.³ See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

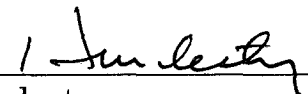
Appellant asserted that the petition should not be procedurally barred because of his belief that the district court has not filed a judgment of conviction. Appellant was mistaken. The original judgment of conviction was filed on December 30, 2003, and the amended judgment of conviction was filed on December 3, 2007. Therefore, the district court properly denied the petition as procedurally barred.

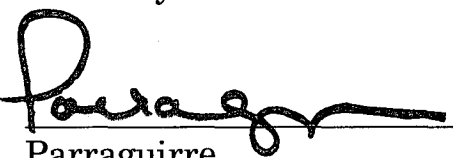
Appellant also claimed that the Nevada Department of Corrections improperly calculated his sentence due to confusion regarding dismissed counts. This claim challenged the computation of time served and cannot be raised in a post-conviction petition for a writ of habeas corpus challenging the validity of the judgment of conviction. See NRS 34.738(3). However, the denial of this claim would be without prejudice, allowing appellant to properly and separately file a post-conviction petition for a writ of habeas corpus challenging the computation of time

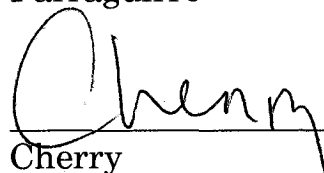
³*Garcia v. State*, Docket No. 56137 (Order of Affirmance, March 29, 2011).

served in the county in which he is incarcerated. See NRS 34.724(1); NRS 34.730(3); NRS 34.738(1). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Juan Jacobo Garcia
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk