

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL A. RAMIREZ,

No. 36097

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUN 13 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On April 24, 1981, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted possession of stolen property. The district court sentenced appellant to serve a term of three years in the Nevada State Prison. Appellant did not file a direct appeal.

On April 10, 2000, appellant filed a proper person post-conviction motion which he labeled "motion to vacate judgment of conviction and withdraw a plea of guilty" in the district court challenging his conviction. The State opposed the motion. Because appellant challenged his conviction, the district court construed appellant's motion to be a post-conviction petition for a writ of habeas corpus. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On May 11, 2000, the district court denied appellant's motion. This appeal followed.

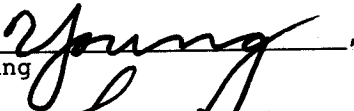
We conclude that the district court properly construed appellant's motion as a post-conviction petition for a writ of habeas corpus because it challenged his conviction.¹ Appellant completed serving his three-year sentence in this


¹See NRS 34.724(2)(b).


case prior to filing his motion. Therefore, appellant was not in custody or otherwise restrained of his liberty at the time he filed his motion.² Furthermore, appellant filed his motion approximately 19 years after entry of the judgment of conviction. Thus, appellant's motion was procedurally barred because it was filed without good cause for the delay.³ We conclude that the district court did not err in denying appellant's motion.⁴

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Young


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Lee A. Gates, District Judge
Attorney General
Clark County District Attorney
Miguel A. Ramirez
Clark County Clerk

²See NRS 34.360; see also Jackson v. State, 115 Nev. 21, 973 P.2d 241 (1999).

³See NRS 34.726(1).

⁴Even assuming that the district court should have construed appellant's motion as a motion to withdraw a guilty plea, appellant's motion was properly denied because the equitable doctrine of laches would apply. See Hart v. State, 116 Nev. ___, 1 P.3d 969, 972 (2000).

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.