

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY CRAIG MALONE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67311

**FILED**

SEP 11 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is a pro se appeal from an order denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; David B. Barker, Judge.

In his petition, appellant sought 324 days of credit for time served. The district court denied the petition, finding that the credit at issue was for time spent incarcerated pursuant to another case. NRS 176.055.

Because a claim for presentence credit challenges the validity of the judgment of conviction and sentence, it must be raised in a timely petition or the petitioner must demonstrate good cause for failing to raise the claim in a timely petition. *See Griffin v. State*, 122 Nev. 737, 744, 137 P.3d 1165, 1169 (2006); NRS 34.726(1). Appellant filed his petition on September 8, 2014, more than 4 years after entry of the judgment of

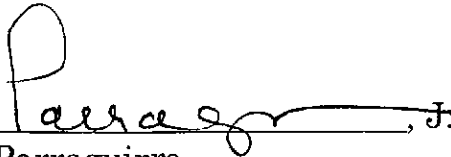
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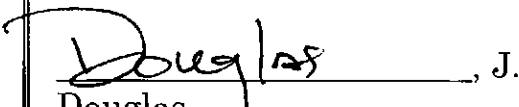
<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

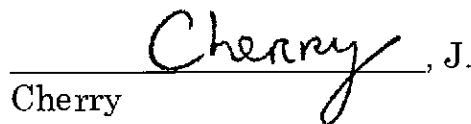
conviction on September 1, 2010. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant did not attempt to demonstrate good cause for the delay. Although the district court erred in failing to apply the procedural time bar, we affirm because the district court reached the correct result in denying the petition. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

Moreover, as a separate and independent ground to deny relief, we conclude that the record supports the district court's determination that appellant was not entitled to credit in this case. Appellant committed the offense in this case while he was on bail in another case; a person on bail remains in the custody of the State while on bail, see *Woolsey v. State*, 111 Nev. 1440, 1443, 906 P.2d 723, 726 (1995), and thus, NRS 176.055(2)(a) precludes credits in this case. Appellant received the credit in case C253850, and in entering a plea in this case, specifically agreed that he would not receive any credit for time served in this case because it had already been received in case C253850. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre

  
Douglas

  
Cherry

cc: Hon. David B. Barker, District Judge  
Barry Craig Malone  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk