


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA MATTHEW JAMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77333-COA

FILED

AUG 14 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Joshua Matthew James appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on May 14, 2018.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

James' petition was filed one and a half years after the judgment of conviction was entered on November 14, 2016;² consequently, it was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1). James claimed there was good cause to excuse the procedural bar because he was actually innocent of the new criminal charges that allowed the State to argue for habitual criminal treatment at sentencing.

As part of the terms of his plea agreement, James agreed that the State would have the unqualified right to argue for any legal sentence,

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

²James did not pursue a direct appeal.

including habitual criminal treatment, if an independent magistrate, by affidavit review, found probable cause to believe James had committed a new crime. James was subsequently indicted on 15 new crimes he allegedly committed while out on bail. Prior to sentencing, the State filed a sentencing memo, arguing that in light of the new indictment the State had regained the full right to argue for any allowable sentence. The State also filed a notice of intent to seek habitual criminal treatment that identified six different convictions the State was relying upon for seeking habitual criminal treatment, none of which included the new allegations against James. The district court thereafter sentenced James under the habitual criminal statute to a term of 60 to 180 months.


In addressing the procedural bar, the district court found that “good cause [was] not established as there was no impediment to [James] to present his argument of actual innocence prior to being sentenced, for failing to timely appeal his sentence or filing his petition.” James entered the guilty plea agreement knowing that the State would be free to argue for habitual criminal treatment if probable cause was found that he had committed new crimes. James was subsequently indicted for new crimes he allegedly committed after he entered his guilty plea. The condition allowing the State to argue for habitual criminal treatment did not require that the new crimes result in convictions. And James did not dispute the validity of the prior felony convictions that were presented to the district court when he was sentenced.

The district court’s findings are supported by the record on appeal, and we conclude the district court did not err by denying James’ procedurally barred habeas petition without an evidentiary hearing. *See*

NRS 34.770(2); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005); *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Joshua Matthew James
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk