

IN THE SUPREME COURT OF THE STATE OF NEVADA

MORRIS HUNTER, JR.,

No. 37099

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

DEC 05 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
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 September 18, 1992, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted possession of a controlled substance with the intent to sell. The district court sentenced appellant to serve a term of five years in the Nevada State Prison, to run concurrently with a sentence in another case. Appellant did not file a direct appeal.

On October 5, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.<sup>1</sup> The State opposed the petition arguing that the petition was improperly titled, failed to conform to the formal requirements set forth under NRS 34.735, and was untimely. The State further pleaded laches pursuant to NRS 34.800. Appellant filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to

<sup>1</sup>Appellant labeled his petition a "motion for relief from judgment, Rule 60(b) NRCP, alternatively petition for writ of error coram nobis." Because appellant challenged his judgment of conviction, the district court properly construed appellant's motion as a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b) (stating that a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them"); NRS 34.780 (stating that the Nevada Rules of Civil Procedure apply "to the extent that they are not inconsistent with NRS 34.360 to 34.830").


81-20371


conduct an evidentiary hearing. On November 22, 2000, the district court denied appellant's petition. This appeal followed.

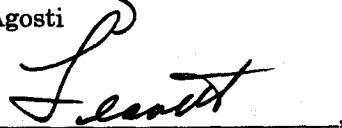
In his petition, appellant contended that his 1992 conviction was invalid because he was improperly charged with attempted possession of a controlled substance with the intent to sell. In 2000, when appellant filed the instant petition challenging his 1992 conviction, appellant was not in custody pursuant to the 1992 judgment of conviction. Appellant's petition recites that appellant was confined at the "United States Penitentiary Lompoc, California [sic]. . . after being convicted of bank robbery Title 18 U.S.C. 2113(a) and sentenced as a career offender to an enhanced term of 240 months, or twenty years imprisonment." Thus, we conclude that the district court lacked jurisdiction to consider appellant's petition.<sup>2</sup> Furthermore, appellant's petition was procedurally barred because it was untimely filed and barred by laches.<sup>3</sup>

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.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Morris Hunter, Jr.  
Clark County Clerk

<sup>2</sup>See Jackson v. State, 115 Nev. 21, 973 P.2d 241 (1999); see also Nev. Const. art. 6, § 6(1); NRS 34.724(1).

<sup>3</sup>See NRS 34.726(1); NRS 34.800(2).

<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).