

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN ROBERT HALVERSON,
Appellant,
vs.
KENNETH G. FRIZZELL, ESQ.,
Respondent.

No. 72592

FILED

OCT 11 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Steven Robert Halverson appeals from a district court order dismissing his complaint for legal malpractice. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Halverson filed the underlying complaint in December, 2016 alleging malpractice against respondent Kenneth G. Frizzell, III, relating to Halverson's October, 2007 plea agreement in a criminal matter in which Frizzell was his counsel. Frizzell then filed a motion to dismiss arguing, among other things, that the claim was barred by the statute of limitations. Over Halverson's opposition, the district court granted the motion to dismiss. This appeal followed.

On appeal, Halverson argues that the district court erred in dismissing the complaint on statute of limitations grounds. We agree. A claim for legal malpractice arising from representation in a criminal matter does not accrue or become actionable until the convicted party is granted appellate or post-conviction relief, and, therefore, the statute of limitations does not begin to run until these events have occurred. *See Clark v.*

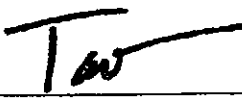
Robison, 113 Nev. 949, 951-52, 944 P.2d 788, 790 (1997). This is because “proximate cause does not exist until post-conviction or appellate relief is granted.” *Id.* at 951, 944 P.2d at 790 (citing *Morgano v. Smith*, 110 Nev. 1025, 1029, 879 P.2d 735, 737 (1994)). And here, the record demonstrates that Halverson has not obtained appellate or post-conviction relief. Thus, because Halverson has not obtained such relief, his malpractice claim has not accrued, and if his claim has not accrued, the statute of limitations on that claim cannot have expired.

It is well settled, however, that Nevada’s appellate courts “will affirm a district court's order if the district court reached the correct result, even if for the wrong reason.” *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010). And here, the very line of Nevada authority demonstrating that Halverson’s malpractice claim is not barred by the statute limitations also illustrates why his complaint fails as a matter of law. As noted above, in determining that the limitations period for claims against criminal defense counsel does not commence until post-conviction or appellate relief is obtained, the Nevada Supreme Court, in *Clark*, relied, in large part, on its earlier decision in *Morgano*. And in *Morgano*, the supreme court held that, in bringing a claim for legal malpractice against a criminal defense attorney, “the plaintiff must plead that he or she has obtained appellate or post-conviction relief in order to overcome a motion for summary judgment or a motion to dismiss.” 110 Nev. at 1028-29, 879 P.2d at 737. But, as noted above, Halverson has not obtained appellate or post-conviction relief and, as a result, his complaint did not include the required statement that such relief had been obtained.

Under these circumstances, the dismissal of Halverson's legal malpractice action was proper and we therefore,

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Ronald J. Israel, District Judge
Steven Robert Halverson
Kenneth G. Frizzell, III
Eighth District Court Clerk