

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODOLFO MORENO,

No. 37287

Appellant,

vs.

**FILED**

NOV 30 2001

THE STATE OF NEVADA,

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

Respondent.

ORDER OF AFFIRMANCE

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

On July 11, 1983, the district court convicted appellant, pursuant to a plea of nolo contendere, of one count of voluntary manslaughter. The district court sentenced appellant to serve a term of six years in the Nevada State Prison. Appellant did not file a direct appeal.

On May 17, 1996, well after appellant had expired his sentence, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition, appellant claimed that his plea was involuntarily entered and that he received ineffective assistance of counsel. The State filed a motion to dismiss the petition. On November 13, 1996, the district court granted the State's motion to dismiss the petition. This court dismissed appellant's appeal, determining that since the appellant had expired his sentence at the time he filed his petition, the district court lacked jurisdiction to consider the petition.<sup>1</sup>

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<sup>1</sup>Moreno v. State, Docket No. 29651 (Order Dismissing Appeal, January 14, 1999).

On May 16, 2000, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court.<sup>2</sup> The district court denied appellant's petition. This appeal followed.


We conclude that the district court did not err in dismissing the petition. The Nevada Constitution provides that district courts have jurisdiction to issue writs of habeas corpus "on petition by . . . any person who is held in actual custody . . . or who has suffered a criminal conviction . . . and has not completed the sentence imposed . . . ."<sup>3</sup> Because appellant had expired his sentence at the time he filed his petition, the district court lacked jurisdiction to consider the petition.<sup>4</sup> Furthermore, appellant's petition was procedurally barred because it was untimely and successive.<sup>5</sup> Therefore, we conclude the district court did not err.

Having reviewed the records 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. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Maupin

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

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

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<sup>2</sup>Appellant actually filed a document labeled "Writ of Error Coram Nobis Pursuant to Nevada Revised Statute" that was virtually identical to appellant's previous petition for a writ of habeas corpus. Because the writ challenged the judgment of conviction, the district court properly treated it as a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b).

<sup>3</sup>See Nev. Const. Art. 6, § 6(1).

<sup>4</sup>See Jackson v. State, 115 Nev. 21, 973 P.2d 241 (1999).

<sup>5</sup>See NRS 34.726(1); NRS 34.810(2).

cc: **Hon. Jerome Polaha, District Judge**  
**Attorney General/Carson City**  
**Washoe County District Attorney**  
**Rodolfo Moreno**  
**Washoe County Clerk**