

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENRICK JAMES BROWN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37644

FILED

MAY 15 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
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 March 19, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary (Count 1) and two counts of forgery (Counts 2 and 3). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for Count 1, a term of sixteen to seventy-two months, for Count 2, a term of twelve to thirty-four months to be served consecutively to the term for Count 1, and for Count 3, a term of twelve to thirty-four months to be served concurrently to the terms for Counts 1 and 2. The district court suspended the sentences and placed appellant on probation for a period of time not to exceed five years. On April 5, 2000, the district court entered an order revoking appellant's probation, executing the original sentences, and

amending the judgment of conviction.<sup>1</sup> Appellant did not file a direct appeal.

On November 14, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant filed a document to supplement his petition. On January 18, 2001, the district court orally denied the petition on the ground that the petition was untimely filed. However, the district court informed appellant's mother that the district court might consider the matter further if appellant demonstrated cause for the delay. Appellant then filed two documents in the district court alleging that he had good cause to file a late petition because he did not have adequate access to a law library, he received inadequate information from inmate law clerks, and he was not informed by his attorney that he could appeal the order revoking probation. The district court determined that appellant failed to demonstrate good cause and entered a final written order denying appellant's habeas corpus petition. This appeal followed.

Preliminarily, we conclude that the district court erred in determining that appellant's petition was untimely filed. Appellant did not challenge the validity of his judgment of conviction or sentence; rather appellant challenged the revocation of his probation. Thus, the procedural

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<sup>1</sup>The district court amended the judgment of conviction to include an award of sixty-five days of credit for time served.

time bar of NRS 34.726 was inapplicable.<sup>2</sup> Nevertheless, we affirm the order of the district court because the claims raised in appellant's petition lacked merit.

In his petition, appellant first claimed that there was insufficient evidence produced at the probation revocation hearing to revoke probation. Appellant claimed that there was no evidence presented that his probation officer, Officer Corrigan, had attempted to counsel him while he was on probation. We conclude that the district court did not abuse its discretion in revoking probation.<sup>3</sup> During the probation revocation hearing, appellant admitted that he absconded from probation from September 23, 1999, until February 15, 2000, a violation of a condition of probation. The Department of Parole and Probation stated that appellant was not supervisable because appellant had absconded. The district court listened to appellant's argument that there were mitigating circumstances but ultimately decided to revoke appellant's probation. Thus, this claim lacked merit.

Second, appellant claimed that he was denied his due process right to confront adverse witnesses at the final probation revocation hearing. We conclude that appellant failed to demonstrate that his due

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<sup>2</sup>NRS 34.726(1) provides, "Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the supreme court issues its remittitur."

<sup>3</sup>Lewis v. State, 90 Nev. 436, 529 P.2d 796 (1974).

process rights were violated.<sup>4</sup> There was no need to confront any witnesses about the violation due to appellant's admission that he had violated one of the conditions of his probation. Appellant was allowed to present mitigating arguments to the district court. Thus, this claim lacked merit.

Third, appellant claimed that his attorney was ineffective for failing to conduct a proper investigation into a plausible line of defense. Appellant claimed that his attorney should have contacted his former probation officer, Officer Zana, to testify about appellant's attitude and record when Officer Zana supervised appellant. Even assuming that appellant was entitled to the effective assistance of counsel during the probation revocation hearing, appellant failed to demonstrate that his attorney's performance was deficient or that he was prejudiced.<sup>5</sup> Appellant admitted that he had violated a condition of his probation. Appellant and his attorney both argued appellant's probation should not be revoked due to mitigating circumstances. Appellant informed the court that Officer Zana had approved of his employment and had established the amount of his monthly restitution payment. Appellant stated that he would be willing to pay more restitution than the set amount. Appellant

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<sup>4</sup>Gagnon v. Scarpelli, 411 U.S. 778 (1973); Morrissey v. Brewer, 408 U.S. 471 (1972); Anaya v. State, 96 Nev. 119, 606 P.2d 156 (1980); Fairchild v. Warden, 89 Nev. 524, 516 P.2d 106 (1973).

<sup>5</sup>Strickland v. Washington, 466 U.S. 668 (1984); Gagnon, 411 U.S. 778; Crump v. Warden, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); Fairchild, 89 Nev. 524, 516 P.2d 106.

informed the court that he had been taking care of his family during his time on probation. Appellant explained that he had absconded because he was afraid and thought that Officer Corrigan was going to charge appellant with a violation of probation. Appellant's attorney twice asked the district court to place appellant in jail for three to six months as a condition to remaining on probation. Appellant failed to offer what further facts or arguments his attorney should have presented that were not already presented to the district court. Thus, this claim lacked merit.

Fourth, appellant claimed that his attorney was ineffective for failing to challenge the probation violation report. Appellant offered no facts in support of this claim. Thus, appellant failed to demonstrate that he was entitled to relief.<sup>6</sup>

Finally, appellant claimed that his attorney was ineffective for failing to object to the fact that Officer Corrigan was not present at the probation revocation hearing. Appellant argued that Officer Corrigan would have clarified the alleged violation and informed the court that Officer Corrigan had not provided appellant with assistance or counseling. Again, even assuming that appellant was entitled to the effective assistance of counsel during the probation revocation hearing, appellant failed to demonstrate that his attorney's performance was deficient or that he was prejudiced.<sup>7</sup> Appellant admitted violating a condition of his

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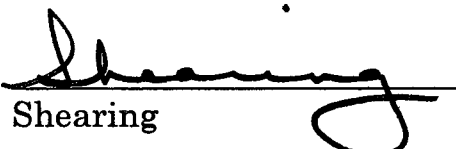
<sup>6</sup>Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

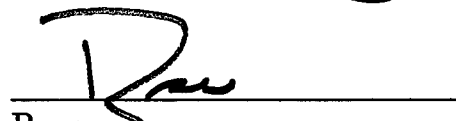
<sup>7</sup>Strickland, 466 U.S. 668; Gagnon, 411 U.S. 778; Crump, 113 Nev. at 303, 934 P.2d at 253; Fairchild, 89 Nev. 524, 516 P.2d 106.

probation, thus it was unnecessary for Officer Corrigan to clarify the violation. Appellant presented mitigating arguments to the district court. Thus, this claim lacked merit.

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>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Kenrick James Brown  
Clark County Clerk

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<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).