

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES CHRISTOPHER PARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83832-COA

FILED

MAY 26 2022

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

ORDER OF AFFIRMANCE

James Christopher Park appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James Todd Russell, Judge.

Park filed his petition on September 2, 2021, more than one year after entry of the judgment of conviction on May 26, 2020, and more than one year after entry of the amended judgment of conviction on July 13, 2020.¹ Thus, Park's petition was untimely filed. *See* NRS 34.726(1). Park's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice.² *See id.*

¹Park did not pursue a direct appeal from either of these judgments of conviction.

²The district court failed to make any findings as to good cause but instead simply addressed Park's claims on the merits. We conclude this was error. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."). We nevertheless affirm the district court's denial of relief for the reasons stated herein. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

First, Park claimed that his trial-level counsel was ineffective for failing to ensure that he received presentence credits. Park also contended that the sentencing court improperly altered his sentence when it entered the first amended judgment of conviction on July 13, 2020. These claims were reasonably available to have been raised in a timely filed petition, and Park did not attempt to demonstrate cause for his delay in raising these claims. Therefore, we conclude Park was not entitled to relief as to these claims.

Second, Park appeared to challenge the validity of the second amended judgment of conviction because it followed a sentencing hearing that occurred outside of his presence. Park's petition was filed within one year of entry of that document on September 2, 2020. Accordingly, entry of the second amended judgment of conviction constituted cause to excuse his delay for a claim challenging that document. *See Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).


Park still had to demonstrate undue prejudice. A criminal defendant does not have an unlimited right to be present at every proceeding. *See Gallego v. State*, 117 Nev. 348, 367-68, 23 P.3d 227, 240 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011). A "defendant must show that he was prejudiced by the absence." *Kirksey v. State*, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1996).

Park did not demonstrate he was prejudiced by his absence from the relevant hearing. The record indicates the hearing at issue was not a new sentencing hearing, no testimony was presented, and the district court merely decided to enter a new judgment of conviction clarifying that Park was not serving his sentence in this matter concurrently with a

sentence from a Washoe County conviction. Accordingly, we conclude Park was not entitled to relief based on this claim, *cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a petitioner's statutory rights were violated when she was not present at a hearing where testimony and evidence were presented), and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
James Christopher Park
Attorney General/Carson City
Attorney General/Ely
Carson City Clerk