

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALVARO PRIETO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38168

FILED

SEP 12 2001

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 16, 1978, the district court convicted appellant, pursuant to a guilty plea, of one count of open or gross lewdness. The district court sentenced appellant to serve a term of one year in the Clark County Detention Center. The district court suspended the sentence and placed appellant on probation for a period of time not to exceed five years. On May 31, 1983, appellant was dishonorably discharged from probation.

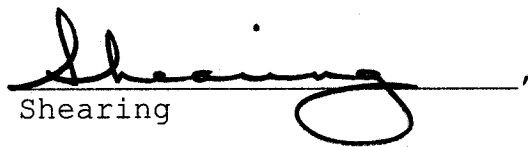
On February 15, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On May 11, 2001, the district court denied appellant's petition. This appeal followed.

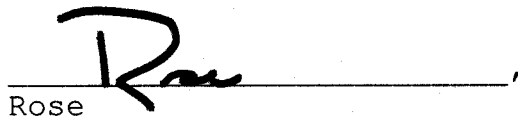
In 2001, when appellant filed the instant petition challenging his 1978 conviction, appellant was not in custody pursuant to the 1978 judgment of conviction. The State's opposition indicated that appellant was dishonorably discharged from probation in 1983 and thus had completed


serving the sentence. Therefore, we conclude that the district court lacked jurisdiction to consider appellant's petition.¹

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.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing, J.


Rose, J.


Becker, J.

cc: Hon. Joseph T. Bonaventure, District Judge
Attorney General
Clark County District Attorney
Alvaro Prieto
Clark County Clerk

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

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