

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE ANTONIO RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90721-COA

FILED

APR 22 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY Elizabeth A. Brown
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Jose Antonio Rodriguez appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on October 8, 2024. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

In his petition, Rodriguez raised four claims: (1) ineffective assistance of counsel at the sentencing hearing; (2) the sentencing judge was biased because he did not allow Rodriguez's family to speak on his behalf at the sentencing hearing and because he took presentence credit away from Rodriguez; (3) the sentencing judge showed personal involvement at the sentencing hearing; and (4) the sentencing judge discussed the facts of Rodriguez's case with his spouse before the sentencing hearing, thus violating the judge's oath and Rodriguez's right to privacy. The district court denied Rodriguez's petition as procedurally barred after determining the petition was filed more than one year after remittitur issued on direct appeal. *See* NRS 34.726(1). However, remittitur issued in Rodriguez's direct appeal case on October 13, 2023. *See Rodriguez v. State*,

No. 85723-COA, 2023 WL 6141308 (Nev. Ct. App. Sep. 18, 2023) (Order of Affirmance). Thus, Rodriguez’s petition filed on October 8, 2024, was filed within one year of the issuance of remittitur on direct appeal and it was error for the district court to deny the petition as procedurally barred pursuant to NRS 34.726.¹

The district court further found Rodriguez’s third claim was procedurally barred pursuant to NRS 34.810 because the claim could have been, and was, raised on direct appeal. Although the district court’s reliance on language in NRS 34.810(1)(b) was mistaken as that subsection applies to postconviction habeas petitions following a jury trial and Rodriguez pleaded guilty, we nevertheless affirm the district court’s denial of Rodriguez’s third claim because it was outside the scope of claims permissible in a postconviction habeas petition challenging a judgment of conviction based on a guilty plea. See NRS 34.810(1)(a) (limiting postconviction habeas petitions following a guilty plea to allegations that the plea “was involuntarily or unknowingly entered” or “was entered without effective assistance of counsel”); *Gonzales v. State*, 137 Nev. 398, 403, 492 P.3d 556, 562 (2021) (allowing allegations of ineffective assistance of counsel at sentencing in a postconviction habeas petition following a guilty plea); see also *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).

¹The State concedes Rodriguez’s petition was timely filed.

Further, Rodriguez's second and fourth claims were also outside the scope of claims permissible in a postconviction habeas petition challenging a judgment of conviction based on a guilty plea. See NRS 34.810(1)(a); *Gonzales*, 137 Nev. at 403, 492 P.3d at 562. Because application of the procedural bars is mandatory, see *State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), we affirm the district court's denial of these two claims, albeit on different grounds, see *Wyatt*, 86 Nev. at 298, 468 P.2d at 341.


Rodriguez's first claim was that counsel provided ineffective assistance at the sentencing hearing and was within the scope of claims permissible in a postconviction habeas petition challenging a judgment of conviction based on a guilty plea. See *Gonzales*, 137 Nev. at 403, 492 P.3d at 562. Because that claim was timely presented and was within the scope of permissible claims, we conclude the district court erred by denying it as procedurally barred, and we remand for the district court to consider that claim in the first instance.

Having concluded the district court properly denied Rodriguez's second, third, and fourth claims² but erred by denying his first claim as procedurally barred, we

²Based on our conclusions regarding Rodriguez's second, third, and fourth claims, we further conclude the district court did not err by denying these claims without appointing counsel. See NRS 34.750. We express no opinion as to the propriety of Rodriguez's request for counsel as it relates to the remaining claim, and nothing in this order should be construed as precluding the district court from reconsidering Rodriguez's request for counsel on remand.

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Jose Antonio Rodriguez
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk