

IN THE SUPREME COURT OF THE STATE OF NEVADA

SETH C. OVERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39339

FILED

APR 10 2003

ORDER OF AFFIRMANCE

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

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

On June 4, 1999, the district court convicted appellant Seth C. Overson, pursuant to a guilty plea, of attempted robbery with the use of a deadly weapon. The district court sentenced Overson to serve two consecutive terms of sixteen to seventy-two months in the Nevada State Prison. The district court suspended the sentence and placed Overson on probation for a period not to exceed three years. Overson did not file a direct appeal. On August 1, 2001, the district court revoked Overson's probation and reinstated the original sentence.¹

On February 26, 2002, Overson filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, and Overson filed a reply. Pursuant to NRS

¹An amended judgment of conviction was filed on August 1, 2001, reflecting this fact.

34.750 and NRS 34.770, the district court declined to appoint counsel to represent Overson or to conduct an evidentiary hearing. On June 4, 2002, the district court denied Overson's petition. This appeal followed.

In his petition, Overson claimed that: (1) he received ineffective assistance of counsel; (2) pursuant to Apprendi,² his sentence was improperly enhanced for use of a deadly weapon; and (3) his plea was involuntary. In denying the petition, the district court addressed the merits of Overson's claims. We conclude that the district court erred in addressing the merits of Overson's petition. Nevertheless, we affirm the order denying the petition because it reached the correct result for the reasons discussed below.

NRS 34.726(1) provides that the district court shall dismiss a habeas corpus petition that is untimely filed unless the petitioner demonstrates good cause for the delay and undue prejudice. Overson filed his petition approximately two and one-half years after entry of the judgment of conviction. Although the district court entered an amended judgment of conviction on August 1, 2001, because the amended judgment of conviction did nothing more than revoke his probation and execute the original sentence, the original judgment of conviction controls for the purposes of NRS 34.726(1). Thus, the petition was untimely.³ In his

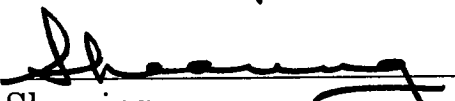
²See Apprendi v. New Jersey, 530 U.S. 466 (2000).


³See NRS 34.726(1).

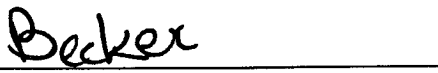
petition, Overson failed to assert any grounds as to why this procedural defect should be excused.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Overson is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Michael L. Douglas, District Judge
Seth C. Overson
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).