

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY D. COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39841

FILED

MAY 08 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 appellant's "writ of error coram nobis to vacate and set aside the judgment and conviction."

On January 12, 1996, appellant was convicted, pursuant to a guilty plea, of one count of sale of a controlled substance in district court case number C109813. The district court sentenced appellant to serve a term of six years in the Nevada State Prison. No direct appeal was taken.

On May 15, 2002, appellant filed a document labeled, "writ of error coram nobis to vacate and set aside the judgment and conviction." The State opposed the motion. On July 1, 2002, the district court denied appellant's motion. This appeal followed.

Preliminarily, we conclude that the district court properly construed appellant's motion to be a post-conviction petition for a writ of habeas corpus. A post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common law, statutory or other remedies which have been available for challenging the validity of

the conviction or sentence, and must be used exclusively in place of them."¹

We further conclude that appellant was precluded from obtaining relief because he was not under restraint for the offense at issue at the time he filed his motion.² This court has held that a defendant who has completed his sentence may not seek habeas corpus relief from the conviction even if the conviction has been used to enhance a sentence that the defendant is presently serving.³ "Allowing a petitioner to file a post-conviction habeas corpus petition to challenge a judgment of conviction, after the petitioner has already completed service of the sentence imposed pursuant to that conviction, undermines the varied interests in the finality of criminal convictions."⁴ Appellant was not in custody in the instant case at the time he filed the instant motion. In his motion, appellant acknowledged that he was in federal custody pursuant to federal drug charges and that he was seeking to challenge his prior Nevada conviction because it was used to enhance his federal sentence. Furthermore, appellant's petition was procedurally barred as it was filed more than six years after entry of the judgment of conviction and

¹See NRS 34.724(2)(b).

²See Nev. Const. Art. 6, § 6(1) (stating that the district courts may issue a writ of habeas corpus on petition by "any person who is held in actual custody in their respective districts, or who has suffered a criminal conviction in their respective districts and has not completed the sentence imposed pursuant to the judgment of conviction.").

³See Jackson v. State, 115 Nev. 21, 973 P.2d 241 (1999).


⁴Id. at 23 n.2, 973 P.2d at 242 n.2.


appellant failed to demonstrate good cause to excuse his delay.⁵ Therefore, we affirm the order of the district court denying appellant's motion.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

⁵See NRS 34.726(1) (providing that a post-conviction petition for a writ of habeas corpus must be filed within one year after entry of the judgment of conviction); Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998) (holding that an allegation that counsel failed to file a direct appeal is not good cause to excuse the procedural bar).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted. To the extent that appellant sought to expand this appeal to include district court case numbers C89058 and C89823B, we decline the relief requested. Appellant's challenge to the aforementioned district court cases suffers from the same defects described above.

cc: Hon. Sally L. Loehrer, District Judge
Anthony D. Collins
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk