

IN THE SUPREME COURT OF THE STATE OF NEVADA

MITILDE MARTINEZ-GONZALEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40039

FILED

JUN 05 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 dismissing appellant Mitilde Martinez-Gonzalez' post-conviction petition for a writ of habeas corpus.

On November 1, 1995, Martinez-Gonzalez was convicted, pursuant to a guilty plea, of one count of mid-level trafficking in a controlled substance. The district court sentenced Martinez-Gonzalez to serve a prison term of 10-25 years, and ordered him to pay a fine of \$100,000.00. Martinez-Gonzalez' direct appeal from the judgment of conviction and sentence was dismissed by this court.¹ The remittitur issued on April 27, 1999.

On November 21, 1997, Martinez-Gonzalez filed a proper person post-conviction "motion to correct an illegal sentence pursuant to NRS 176.155 and/or in the alternative order for a writ of habeas corpus on

¹Martinez-Gonzalez v. State, Docket No. 27807 (Order Dismissing Appeal, March 31, 1999).

the legality of imprisonment pursuant to NRS 34.360” in the district court. The State opposed the motion and/or petition. The district court treated Martinez-Gonzalez’ motion as a post-conviction petition for a writ of habeas corpus, and on March 17, 2000, denied the petition without conducting an evidentiary hearing. Martinez-Gonzalez did not pursue an appeal from the district court order.

On March 22, 2000, Martinez-Gonzalez filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Martinez-Gonzalez or conduct an evidentiary hearing. On March 30, 2000, the district court denied Martinez-Gonzalez’ petition. On appeal, this court affirmed the district court’s order, concluding that Martinez-Gonzalez’ petition was successive and failed to demonstrate good cause sufficient to excuse the procedural defects.² The remittitur issued on January 15, 2002.

On June 20, 2002, Martinez-Gonzalez filed another proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition, Martinez-Gonzalez contended, pursuant to NRS 453.341(1), Sparkman v. State,³ and Carter v. State,⁴ that he “is entitled

²Martinez-Gonzalez v. State, Docket No. 35938 (Order of Affirmance, December 18, 2001).

³95 Nev. 76, 590 P.2d 151 (1979).

⁴95 Nev. 259, 592 P.2d 955 (1979).

to the benefit of the more recent statute which mitigates the punishment for the offense.” Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Martinez-Gonzalez or conduct an evidentiary hearing. On July 22, 2002, the district court considered the merits and dismissed Martinez-Gonzalez’ petition. This timely appeal followed.

Initially, we note that Martinez-Gonzalez’ petition was filed more than three years after the issuance of the remittitur in his direct appeal. Also, the instant petition was Martinez-Gonzalez’ third habeas petition. Because Martinez-Gonzalez failed to allege, let alone establish good cause for the untimely and successive petition, it was procedurally barred, and we explicitly conclude that the petition should have been denied on that basis.⁵ We further conclude that the district court correctly determined that Martinez-Gonzalez’ petition lacked merit, and we affirm the district court’s ruling on that separate, independent ground.⁶

⁵See NRS 34.726(1) (“Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the supreme court issues its remittitur.”); NRS 34.810(2); see generally Harris v. Reed, 489 U.S. 255, 263 (1989) (holding that procedural default does not bar federal review of claim on the merits unless state court rendering judgment relied “clearly and expressly” on procedural bar) (citation omitted).

⁶Harris, 489 U.S. at 264 n.10 (holding that as long as the state court explicitly invokes a state procedural bar, “a state court need not fear reaching the merits of a federal claim in an alternative holding”).

Former NRS 453.3385(2) required the district court to sentence Martinez-Gonzalez to a prison term of life, or to a definite term not less than ten years, and fine him not less than \$100,000.00.⁷ When the legislature amended that section and reduced the statutory penalties in 1995, it clearly stated that the amendments do not apply to offenses committed before July 1, 1995.⁸ Martinez-Gonzalez committed the offense for which he was convicted on October 21, 1994, and his guilty plea agreement was filed in the district court on December 9, 1994. Therefore, we conclude that Martinez-Gonzalez is not entitled to relief.

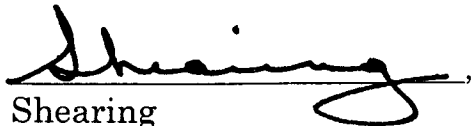
In addition, Martinez-Gonzalez' reliance on Sparkman and NRS 453.341 is misplaced. Unlike the amendments at issue in Sparkman, the legislature expressly stated that the amendments to NRS 453.3385 do not apply to offenses committed before July 1, 1995.⁹ Accordingly, we further conclude that the specific statements of legislative intent control over the more general language of NRS 453.341 that provided the basis for our decision in Sparkman.

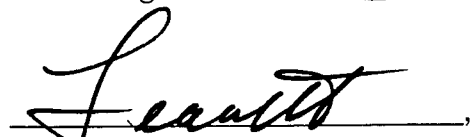
⁷Compare NRS 453.3385(2) with 1983 Nev. Stat., ch. 111, § 2(2), at 287; see also 1995 Nev. Stat., ch. 443, § 296(2), at 1288.


⁸1995 Nev. Stat., ch. 443, § 393, at 1340 ("The amendatory provisions of sections 1 to 230, inclusive, and 232 to 374, inclusive, of this act do not apply to offenses which are committed before July 1, 1995.").

⁹Compare 1977 Nev. Stat., ch. 567, §§ 1-17, at 1407-17 with 1995 Nev. Stat., ch. 443, §§ 393-94, at 1340.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Martinez-Gonzalez is not entitled to relief and that briefing and oral argument are unwarranted.¹⁰ Accordingly, we ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Richard Wagner, District Judge
Mitilde Martinez-Gonzalez
Attorney General Brian Sandoval/Carson City
Humboldt County District Attorney
Humboldt County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).