

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES PERRY BLAKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40399

FILED

SEP 16 2003

ORDER OF AFFIRMANCE

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

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

On March 4, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of trafficking in a controlled substance. The district court sentenced appellant to serve a term of thirty-six months with minimum parole eligibility after twelve months had been served in the Nevada State Prison. The district court provided appellant with three hundred and sixty-five days of credit for time served. No direct appeal was taken.

On August 8, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. On November 13, 2002, the district court dismissed appellant's petition. This appeal followed.

We conclude that appellant was precluded from obtaining relief in a habeas corpus petition because he was not under restraint for

the offense at issue at the time he filed his petition.¹ This court has held that a defendant who has completed his sentence may not seek habeas corpus relief from that conviction even if that conviction has been used to enhance a sentence that the defendant is presently serving.² "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."³ Appellant was not in custody in the instant case at the time he filed the petition. In his petition, 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 three years after entry of the judgment of conviction, and appellant failed to demonstrate good cause to excuse the delay in filing.⁴

¹See 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").

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

³Id. at 23 n.2, 973 P.2d at 242 n.2.

⁴See 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); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

Therefore, we affirm the order of the district court dismissing appellant's petition.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

cc: Hon. Kathy A. Hardcastle, District Judge
James Perry Blake
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).