

IN THE SUPREME COURT OF THE STATE OF NEVADA


TROY ALLEN BACON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40422

FILED

OCT 15 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

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

On September 21, 1998, the district court convicted appellant, pursuant to a guilty plea, of three counts of assault with a deadly weapon on a public officer. The district court sentenced appellant to serve three consecutive terms of twenty-eight to seventy-two months in the Nevada State Prison. No direct appeal was taken.

On February 22, 1999, appellant filed a proper person document labeled, "motion to change consecutive sentencing to concurrent sentencing." The State opposed the motion. On May 10, 1999, the district court denied the motion. No appeal was taken.

On January 4, 2000, appellant filed a proper person motion for sentence modification in the district court. The State opposed the motion. The district court denied the motion. This court affirmed the order of the district court on appeal.¹

¹Bacon v. State, Docket No. 36387 (Order of Affirmance, November 30, 2001).

On May 14, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On October 16, 2002, the district court denied appellant's petition. This appeal followed.

The district court denied appellant's petition on the merits of his claims. However, our review of the record on appeal reveals that appellant's petition was procedurally barred pursuant to NRS 34.726(1). NRS 34.726(1) requires a habeas corpus petition to be filed within one year after entry of the judgment of conviction if no direct appeal was taken, or within one year after this court issues its remittitur if a direct appeal was taken. This court has recognized, regarding the latter, that the one-year period for filing a petition "begins to run from the issuance of the remittitur from a timely direct appeal to this court from the judgment of conviction."² Appellant did not pursue a direct appeal. Thus, appellant's petition was untimely filed because it was filed approximately three and one-half years after entry of the judgment of conviction. Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice.³

The district court's order makes no finding of good cause in the instant case. Appellant did not attempt to demonstrate good cause for the delay. Thus, although we conclude that the district court erroneously

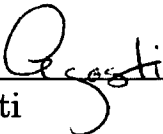
²Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133 (1998).


³See NRS 34.726(1).

reached the merits of appellant's claims in denying appellant's petition, we conclude that the district court reached the correct result in denying appellant's petition.⁴ Therefore, we affirm the decision of the district court to deny 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.


_____, C.J.
Agosti


_____, J.
Becker


_____, J.
Shearing

cc: Hon. Michael P. Gibbons, District Judge
Troy Allen Bacon
Attorney General Brian Sandoval/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk

⁴See generally Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

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