

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY FLORES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40912

FILED

JAN 27 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a district court order denying appellant Anthony Flores's post-conviction petition for a writ of habeas corpus.

On June 30, 1999, Flores was convicted, pursuant to a guilty plea, of one count of felony attempted stop required on the signal of a police officer. The district court sentenced Flores to a prison term of 24 to 60 months and then suspended execution of the sentence, placing Flores on probation for a time period not to exceed 5 years. Flores did not appeal from the judgment of conviction.

On July 1, 2002, the district court entered an amended judgment of conviction, revoking Flores's probation and reducing the original sentence imposed to a prison term of 18 to 48 months. Flores did not appeal from the amended judgment of conviction.

On November 5, 2002, Flores filed a proper person post-conviction petition for a writ of habeas corpus. On December 13, 2002, the State moved to dismiss the petition, arguing that it was untimely and procedurally barred. On December 26, 2002, Flores filed a reply to the State's motion to dismiss, arguing the petition was timely because it was filed within one year of the amended judgment of conviction. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel

to represent Flores or to conduct an evidentiary hearing. On February 4, 2003, the district court denied the petition. Flores filed this timely appeal.

In the petition, Flores first claimed that the State breached the terms of the plea agreement at the probation revocation proceeding. In particular, Flores claimed that the State had promised to recommend a maximum prison term of 3 years, but then breached that promise because the stipulated sentence had a maximum prison term of 4 years. The district court denied Flores's claim, ruling that it was untimely and procedurally barred.

We conclude that the district court erred in ruling that Flores's claim was procedurally barred. Flores's claim could not have been raised earlier, *i.e.*, in a post-conviction habeas petition filed within one year of the original judgment of conviction, because Flores challenged the district court's ruling in the amended judgment of conviction entered on July 1, 2002 -- approximately three years after the original judgment of conviction was filed.

Although the district court erred in ruling that Flores's claim was procedurally barred, we conclude that the district court reached the right result in denying Flores's claim.¹ Specifically, we conclude that the district court properly denied Flores's claim involving the breach of the plea agreement at the probation revocation proceeding because it fell outside of the scope of permissible claims that may be raised in a post-

¹See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").

conviction petition for a writ of habeas corpus.² Also, Flores waived his right to bring the claim by failing to raise it in on appeal from the district court order revoking probation.³

Finally, as a separate and independent ground for denying relief, we conclude that Flores's claim was properly denied because it was belied by the record.⁴ Although Flores claimed that the State promised him a maximum prison term of 3 years, the plea agreement signed by Flores contained no such promise. Instead, the State promised, at the original sentencing proceeding, not to oppose probation as long as Flores participated in the serious offender program for not less than three years.⁵ Additionally, Flores was advised, at the plea canvass and in the plea agreement, that he could be sentenced to a maximum prison term of 5 years. Accordingly, because the prosecutor never promised to recommend a maximum sentence of 3 years, the prosecutor did not breach the plea agreement by stipulating to a reduction of the original sentence imposed.

Second, Flores claimed that he was entitled to additional credit for time served in custody prior to sentencing from the time period

²NRS 34.810(1)(a) (a petitioner who has pleaded guilty may, in a post-conviction habeas petition, claim that his guilty plea is invalid, or claim that his guilty plea was entered without effective assistance of counsel).

³NRS 34.810(1)(b)(2).

⁴See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

⁵At the original sentencing proceeding, the State fulfilled its promise not to oppose probation, and the district court granted Flores probation for an indeterminate time period not to exceed 5 years. Ultimately, however, because Flores violated the conditions of his probation, Flores's probation was revoked.

of July 26, 1998, to June 3, 2002. The district court rejected this claim, ruling that it was untimely and procedurally barred. We conclude that the district court erred in ruling that Flores's claim involving presentence incarceration credit was untimely. This court has recognized that a challenge to the computation of credit for time served is not subject to time constraints and procedural bars because it is a request for traditional habeas relief.⁶

Although the district court erred in ruling that Flores's claim for presentence incarceration credit was untimely, we conclude that the district court properly denied the claim because it failed for lack of specificity. The record in this case reveals that Flores was arrested on the instant case on July 26, 1998, but on that same day, posted bond and was released from custody. On September 9, 1999, Flores was admitted to probation. Subsequently, a bench warrant was issued and Flores was arrested on April 26, 2002. On July 1, 2002, when Flores's probation was revoked, he was given 153 days credit for time served. Flores alleged that he is entitled to 148 additional days credit. However, in the petition, Flores failed to identify the specific dates that he was in custody during the time period at issue for which he was entitled to additional credit and also failed to allege that he did not receive credit in any other criminal cases during that time period; those allegations are necessary so that the district court and this court may conduct a meaningful review of his claim for presentence incarceration credit.⁷ Accordingly, because Flores's claim

⁶Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996); Pangallo v. State, 112 Nev. 1533, 1537 n.3, 930 P.2d 100, 103 n.3 (1996), abrogated on other grounds by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

⁷See Pangallo, 112 Nev. at 1537, 930 P.2d at 103.

lacked adequate specificity, we conclude that the district court did not err in denying Flores's request for additional presentence incarceration credit.⁸

Finally, in the petition, Flores claimed that the State violated Flores's right to equal protection, on January 19, 1999, by misinforming the district court, at a status check hearing, that Flores had a "felony evading" charge. The district court rejected Flores's claim, again, ruling that it was untimely and procedurally defaulted. We agree with the district court. Flores's claim was untimely because the purported violation occurred prior to the entry of the original judgment of conviction and, therefore, Flores could have raised the issue on direct appeal from the original judgment of conviction. Moreover, assuming Flores was attempting to raise the issue under the rubric of ineffective assistance of counsel, the claim could have been raised in a post-conviction habeas petition filed within one year of the original judgment of conviction.⁹ Although Flores noted that his probation was revoked and the original judgment of conviction was amended, the time period set forth in NRS 34.726(1) does not restart for all conceivable claims merely because a judgment of conviction is amended. Rather, claims involving proceedings occurring prior to the entry of the prior judgment of conviction that could

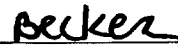
⁸We note that we affirm the ruling of the district court without prejudice to Flores's right to file another post-conviction habeas petition raising a claim for presentence incarceration credit that is sufficiently specific.

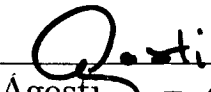
⁹See NRS 34.726(1).

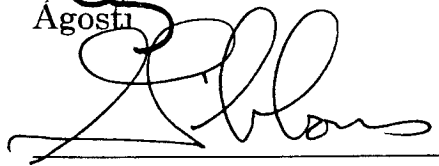
have been previously raised are untimely and, therefore, procedurally barred absent a showing of good cause and prejudice.¹⁰

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Flores is not entitled to relief and that briefing and oral argument are unwarranted.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

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

¹⁰See generally Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (recognizing that the purpose of the statutory time limit set forth in NRS 34.726(1) is to prevent a petitioner from abusing the post-conviction remedies by filing habeas petitions in perpetuity).

¹¹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).