

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID EUGENE ST. PIERRE, SR.  
A/K/A DAVID E. ST. PIERRE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41123

**FILED**

JAN 02 2004

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

ORDER OF AFFIRMANCE

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 June 25, 1993, the district court convicted appellant, pursuant to a jury verdict, of two counts of use of a minor in production of pornography, one count of attempted sexual assault on a minor under the age of fourteen, one count of attempted lewdness with a minor, three counts of solicitation of a minor to engage in the infamous crime against nature, one count of sexual assault, and three counts of attempted sexual assault. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. On appeal, this court vacated one count of attempted sexual assault on a minor under the age of fourteen, one count of attempted lewdness with a minor and one count of sexual assault. This court directed the district court to modify the judgment of conviction to run count four consecutively to count one.<sup>1</sup> The

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<sup>1</sup>St. Pierre v. State, Docket No. 24090 (Order Modifying Judgment of Conviction and Dismissing Appeal, July 7, 1994).

remittitur issued on July 26, 1994. On August 30, 1994, the district court entered an amended judgment of conviction complying in all respects with this court's order.

Appellant filed a number of proper person motions in the district court. This court dismissed appellant's subsequent appeals.<sup>2</sup> Appellant also filed an untimely proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition, and this court dismissed appellant's subsequent appeal.<sup>3</sup>

On December 30, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.<sup>4</sup> Appellant also filed a motion for the appointment of standby counsel and a motion for an order to produce prisoner. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint

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<sup>2</sup>See e.g., St. Pierre v. State, Docket No. 37367 (Order Dismissing Appeal, February 22, 2001); St. Pierre v. State, Docket No. 31809 (Order Dismissing Appeal, April 20, 1998); St. Pierre v. State, Docket No. 31598 (Order Dismissing Appeal, April 20, 1998); St. Pierre v. State, Docket No. 31629 (Order Dismissing Appeal, February 6, 1998).

<sup>3</sup>St. Pierre v. State, Docket No. 31312 (Order Dismissing Appeal, April 20, 1998).

<sup>4</sup>In a prior order entered in this matter, this court stated that the district court had construed a petition for a writ of mandamus to be a post-conviction petition for a writ of habeas corpus. However, a review of the complete record on appeal reveals that the district court construed appellant's "motion for relief from void judgment" to be a habeas corpus petition. Because appellant challenged the validity of his judgment of conviction and because a motion filed pursuant to the Nevada Rules of Civil Procedure is inapplicable in the instant criminal proceeding, we conclude that the district court properly construed appellant's motion to be a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b).

counsel to represent appellant or to conduct an evidentiary hearing. On February 5, 2003, the district court dismissed appellant's petition. This appeal followed.<sup>5</sup>

Appellant filed his petition more than eight years after this court issued the remittitur from his direct appeal and entry of the amended judgment of conviction. Thus, appellant's petition was untimely filed.<sup>6</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>7</sup>

Appellant did not attempt to demonstrate good cause for the delay. Rather, appellant claimed that his amended judgment of conviction was void because he was not present for its entry and was not personally served with a copy of the amended judgment of conviction. Appellant claimed that he may challenge a void judgment of conviction at any time.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition. Appellant's judgment of conviction was not void. Because the district court did nothing more than amend the judgment of conviction as directed by this court, appellant was not required to be present for entry of the amended judgment of conviction. Appellant's reliance upon the Nevada Rules of Civil Procedure for his argument that he must be personally

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<sup>5</sup>After the district court orally dismissed appellant's petition, appellant filed a motion for an evidentiary hearing and a motion for relief from a void judgment. These motions are not interlocutory, and thus, are not appealable in this proceeding. See Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).


<sup>6</sup>See NRS 34.726(1).


<sup>7</sup>See id.


served with a copy of the amended judgment is misplaced. The Nevada Rules of Civil Procedure do not apply to criminal judgments of conviction. No criminal statute or court rule requires that a defendant be personally served with the judgment of conviction. Rather, a judgment of conviction in a criminal case is final when it is signed by the judge and entered by the clerk of the district court.<sup>8</sup> Thus, we conclude that the district court did not err in concluding that appellant's petition was procedurally time-barred.

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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Maupin

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<sup>8</sup>See NRS 176.105; Miller v. Hayes, 95 Nev. 927, 604 P.2d 117 (1979).

<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Sally L. Loehrer, District Judge  
David Eugene St. Pierre Sr.  
Attorney General Brian Sandoval/Ely  
Clark County District Attorney David J. Roger  
Clark County Clerk