

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEROY ROOSEVELT MACK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41777

FILED

MAR 23 2004

ORDER OF AFFIRMANCE

JANE H. M. BLOOM  
CLERK OF SUPREME COURT  
BY J. Richard  
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 April 18, 1996, the district court convicted appellant, pursuant to an Alford<sup>1</sup> plea, of one count of attempted murder. The district court sentenced appellant to serve a term of six years in the Nevada State Prison. No direct appeal was taken.

On August 17, 2001, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On October 9, 2001, the district court denied appellant's motion. No appeal was taken.

On October 30, 2001, appellant filed a second proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On November 16, 2001, the district court denied appellant's motion. No appeal was taken.

On April 3, 2002, appellant filed a proper person document labeled, "motion to have counsel dismissed and request calendar date set

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<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

for motion to withdraw plea of guilty and invoke right to jury trial." On May 10, 2002, the district court denied appellant's motion. This court dismissed appellant's subsequent appeal for lack of jurisdiction.<sup>2</sup>

On June 25, 2002, appellant filed a proper person motion to seal or expunge his conviction. On July 24, 2002, the district court denied appellant's motion. No appeal was taken.

On November 7, 2002, appellant filed a proper person motion to set aside the judgment or grant a new trial. The State opposed the motion. At the conclusion of a hearing on the motion, the district court denied the motion and found appellant in contempt for an outburst during the proceedings. On February 13, 2003, the district court entered a written order denying appellant's motion and finding appellant in contempt.<sup>3</sup> This court affirmed the order of the district court denying appellant's motion and dismissed appellant's appeal from the contempt order.<sup>4</sup>

On April 30, 2003, 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. 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 August 21, 2003, the district court denied appellant's petition. This appeal followed.

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<sup>2</sup>Mack v. State, Docket No. 39756 (Order Dismissing Appeal, July 30, 2002).

<sup>3</sup>For the contempt, the district court ordered appellant to serve thirty days consecutive to the sentence he was currently serving.

<sup>4</sup>Mack v. State, Docket No. 40802 (Order of Affirmance and Dismissing Appeal in Part, November 5, 2003).

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.<sup>5</sup> 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.<sup>6</sup> "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."<sup>7</sup> 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 seven years after entry of the judgment of conviction, and appellant failed to demonstrate good cause to excuse the delay in filing.<sup>8</sup>

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<sup>5</sup>See 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.").

<sup>6</sup>See Jackson v. State, 115 Nev. 21, 973 P.2d 241 (1999).

<sup>7</sup>Id. at 23 n.2, 973 P.2d at 242 n.2.


<sup>8</sup>See 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

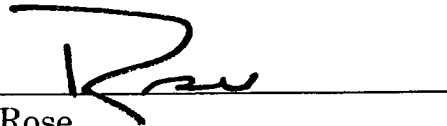
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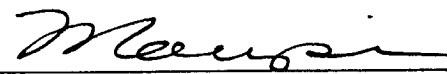
Therefore, we affirm the order of the district court denying appellant's petition.

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

ORDER the judgment of the district court AFFIRMED.

  
Shearing, C.J.

  
Rose, J.

  
Maupin, J.

cc: Hon. Sally L. Loehrer, District Judge  
Leroy Roosevelt Mack  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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(1994) (holding that good cause must be an impediment external to the defense).

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