IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK STEVEN ALEXANDER,
Appellant,
vs.
WARDEN, LOVELOCK CORRECTIONAL CENTER, CRAIG FARWELL,
Respondent.

No. 42085

FILED

JAN 21 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Jack Steven Alexander's post-conviction petition for a writ of habeas corpus.

On May 16, 2001, Alexander was convicted, pursuant to a nolo contendere plea, of battery with intent to commit sexual assault (count I), burglary (count II), and open or gross lewdness (count III). The district court sentenced Alexander to serve a prison term of 72 to 180 months for count I, a consecutive prison term of 48 to 120 months for count II, and a consecutive jail term of 318 days for count III. Alexander filed a direct appeal, and this court affirmed the judgment of conviction.[1] The remittitur issued on October 23, 2001.

On October 30, 2002, Alexander filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition, and the district court appointed counsel to represent Alexander. After conducting an evidentiary hearing, the district court denied the petition. Alexander filed the instant appeal.

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[1]Alexander v. State, Docket No. 38056 (Order of Affirmance, September 27, 2001).

Preliminarily, we note that Alexander's petition was untimely because it was not filed within one year of this court's issuance of the remittitur in Alexander's direct appeal.[2] At the evidentiary hearing, Alexander argued that the petition was timely filed because it was delivered to prison officials on October 22, 2001.[3] However, the prison mailbox rule does not apply to the filing of post-conviction habeas petitions and, therefore, Alexander's petition was untimely.[4] Because Alexander failed to establish good cause for the untimely petition, it is procedurally barred, and we explicitly conclude that the petition should have been denied on that basis.[5]

We note, however, that the district court correctly determined that Alexander's petition lacked merit. The district court found that defense counsel was not ineffective under the standard set forth in Strickland v. Washington,[6] and that Alexander's nolo contendere plea was knowing and voluntary. The district court's factual findings regarding the validity of a nolo contendere plea and claims of ineffective assistance of

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[2]See NRS 34.726(1).

[3]See Kellogg v. Journal Communications, 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (notice of appeal is deemed "filed" when it is delivered to a prison official).

[4]See Gonzales v. State, 118 Nev. ___, 53 P.3d 901 (2002).

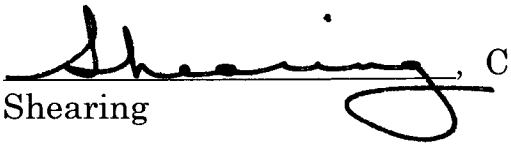
[5]See generally Harris v. Reed, 489 U.S. 255, 263 (1989) (holding that procedural default does not bar federal review of claim on the merits unless state court rendering judgment relied "clearly and expressly" on procedural bar) (citation omitted).

[6]466 U.S. 668 (1984).

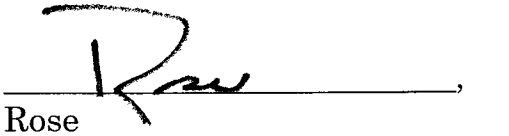
counsel are entitled to deference when reviewed on appeal.[7] Alexander has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong.[8] Moreover, Alexander has not demonstrated that the district court erred as a matter of law. Accordingly, we affirm the district court's ruling on that separate, independent ground.[9]

Having considered Alexander's contentions and concluded that they lack merit, we

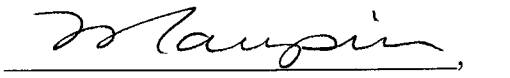
ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Shearing



_____, J.
Rose



_____, J.
Maupin

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[7]See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

[8]Alexander also argues that the district court erred in denying his petition because his sentence was excessive. We note that the district court did not err in rejecting Alexander's contention because it falls outside the scope of claims that can be raised in a post-conviction habeas petition. See NRS 34.810(1)(a). Additionally, Alexander's contention has already been rejected by this court in his direct appeal and, therefore, is barred by the doctrine of the law of the case. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

[9]See Harris, 489 U.S. at 264 n.10 (holding that as long as the state court explicitly invokes a state procedural bar, "a state court need not fear reaching the merits of a federal claim in an alternative holding").

cc: Hon. J. Michael Memeo, District Judge
Matthew J. Stermitz
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk