

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN KANIPE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42378

FILED

MAY 28 2004

ORDER OF AFFIRMANCE

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

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

On June 6, 2002, the district court convicted appellant, pursuant to an Alford plea,¹ of two counts of open and gross lewdness and one count of attempted sexual assault. The district court sentenced appellant to serve a total of twenty-four to sixty months in the Nevada State Prison. No direct appeal was taken.

On September 11, 2003, 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 December 1, 2003, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than one year after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²See NRS 34.726(1).

³See id.

In his petition, appellant claimed that his guilty plea was not entered knowingly and voluntarily because he was not informed of the specific conditions of lifetime supervision. Appellant claimed that his trial counsel was ineffective for failing to adequately inform him about lifetime supervision and failing to inform him of his right to appeal. In an attempt to demonstrate cause for the delay, appellant argued that he was never informed of post-conviction remedies. Appellant further claimed that this court's decision in Palmer v. State⁴ should excuse his delay because his challenge to lifetime supervision was not available prior to the decision in Palmer.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant's petition was procedurally barred. In Palmer, this court concluded that lifetime supervision is a direct consequence of a guilty plea of which the defendant must be informed.⁵ However, this court need not reach the threshold issue of whether Palmer would apply retroactively because the facts presented in Palmer are distinguishable from those presented in the instant case, and thus, the holding in Palmer is inapposite and does not excuse appellant's delay. There is no requirement in Palmer that a criminal defendant be informed of the precise conditions of lifetime supervision—only that the criminal defendant be informed of lifetime supervision. The record reveals that appellant was informed of the special sentence of lifetime supervision during the plea canvass.⁶ Further, we note that

⁴118 Nev. 823, 59 P.3d 1192 (2002).

⁵Id.

⁶We note that the imposition of lifetime supervision was mandatory. See NRS 176.0931(1). Thus, appellant's sentence is not illegal.

Palmer was decided six months prior to the one-year deadline for filing a petition in the instant matter, however, appellant waited approximately nine months from the decision in Palmer to file his petition. This is not a reasonable delay.⁷ Finally, the failure to receive advice about post-conviction remedies does not constitute an impediment external to the defense. Therefore, we affirm the order of the district court denying appellant's petition as procedurally 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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

⁷See Hathaway v. State, 119 Nev. ___, 71 P.3d 503 (2003).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. John S. McGroarty, District Judge
John Kanipe
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk