

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER BURDETTE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42579

FILED

JUL 27 2004

ORDER OF AFFIRMANCE

JANETTE M BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
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. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

On October 19, 2000, the district court convicted appellant, pursuant to a guilty plea, of child abuse and neglect with substantial mental injury. The district court sentenced appellant to serve a term of 43 to 192 months in the Nevada State Prison. The sentence was suspended, and appellant was placed on a fixed term of five years probation. Appellant did not file a direct appeal. On February 9, 2001, the district court entered an order revoking probation after appellant stipulated to probation violations. Appellant's original sentence was executed, with 58 days credit for time previously served.

On July 21, 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 February 3, 2004, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition nearly three years after entry of the judgment of conviction. Thus, his petition was untimely filed.<sup>1</sup> Appellant's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.<sup>2</sup>

In an attempt to demonstrate cause for the delay, appellant argued that his sentence was illegal, and a motion to correct an illegal sentence may be raised at any time in the form of a habeas corpus petition. Appellant claimed his sentence was illegal because he was never advised that his eligibility for parole was predicated upon a psychological certification. Appellant also asserted that he only recently discovered the certification requirement and thus, was unable to file his habeas corpus petition sooner. Appellant cited Palmer v. State as support for his contention that his untimely petition must be considered.<sup>3</sup>

We conclude that appellant has failed to demonstrate good cause to excuse his untimely petition. The holding in Palmer is inapposite to this case and thus cannot serve as good cause. Further, to the extent that appellant's petition can be construed as a motion to correct an illegal sentence, appellant's claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence.<sup>4</sup> His sentence was facially legal, and there is no indication in the record that the district court was without jurisdiction in the instant case. Thus, based upon our

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

<sup>2</sup>See id.

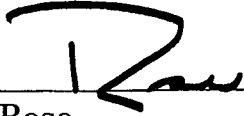
<sup>3</sup>Palmer v. State, 118 Nev. 823, 59 P.3d 1192 (2002).

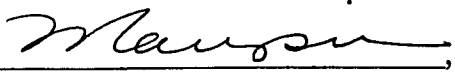
<sup>4</sup>Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).


review of the record on appeal, we conclude appellant has not demonstrated good cause to excuse the tardiness of his habeas corpus 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>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

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

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

  
\_\_\_\_\_, J.  
Douglas

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

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<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>6</sup>We 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.