

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC T. JACKSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42657

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; Michelle Leavitt, Judge.

On March 18, 2002, the district court convicted appellant, pursuant to a guilty plea, of attempted sexual assault and attempted lewdness with a child under the age of fourteen. The district court sentenced appellant to serve two consecutive terms of 150 months in the Nevada State Prison, with parole eligibility after 60 months. On February 21, 2003, appellant filed a motion for reconsideration of his sentence, which the district court denied on March 12, 2003. Appellant did not file a direct appeal.

On August 22, 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 more than a year after entry of the judgment of conviction. Thus, appellant's petition was untimely filed and procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>1</sup>

In an attempt to demonstrate cause for the delay, appellant argued that his habeas corpus petition was timely filed because it was filed within one year of his motion for reconsideration of his sentence. A habeas corpus petition must be filed within one year after entry of the judgment of conviction or if an appeal has been taken from the judgment, within one year after this court issues its remittitur.<sup>2</sup> However, a motion for reconsideration of appellant's sentence does not toll the time in which to file his habeas corpus petition.<sup>3</sup>

Appellant also argued that his habeas corpus petition was not time-barred because 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 not advised of the consequences of lifetime supervision pursuant to Palmer v. State.<sup>4</sup> A motion to correct an illegal sentence may only challenge the

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

<sup>2</sup>Id.

<sup>3</sup>See generally, Phelps v. State, 111 Nev. 1021, 900 P.2d 344 (1995).

<sup>4</sup>118 Nev. 823, 59 P.3d 1192 (2002).

facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.<sup>5</sup> Appellant's claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence. Appellant's sentence was facially legal and there is no indication in the record that the district court was without jurisdiction in the instant case. Further, NRS 176.0931 requires imposition of a special sentence of lifetime supervision if the defendant is convicted of a sexual offense. The crime of attempted lewdness with a child under the age of fourteen is a sexual offense. Moreover, appellant was informed in the written guilty plea agreement that his sentence would include lifetime supervision.

Appellant also claimed that his petition was not in procedural default because his counsel was ineffective in failing to tell him about the Palmer decision. The holding in Palmer is inapposite to this case and thus, cannot serve as good cause. Appellant was informed that his sentence would include lifetime supervision and therefore, he has not demonstrated good cause to excuse his petition's procedural defects.


Based on our review of the record of appeal, we conclude that the district court did not abuse its discretion in determining that appellant failed to show good cause for the delay.


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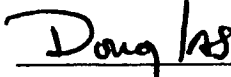
<sup>5</sup>Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).

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>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

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

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

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

cc: Hon. Michelle Leavitt, District Judge  
Eric T. Jackson  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</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.