

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY BARONE, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42826

FILED

AUG 19 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 Anthony Barone, Jr.'s post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On September 6, 1991, the district court convicted Barone, pursuant to a jury verdict, of battery with the use of a deadly weapon. The district court sentenced Barone to serve a term of ten years in the Nevada State Prison. Barone's sentence was imposed to run concurrently with his sentence in district court case no. C91406.¹ On appeal, this court reversed Barone's conviction and remanded the case for a new trial.² On February 2, 1995, Barone was convicted, pursuant to a guilty plea, of one

¹In district court case no. C91406, Barone was convicted of one count each of burglary, and robbery with the use of a deadly weapon. He was sentenced to a term of eight years for the burglary conviction, a consecutive term of twelve years for the robbery conviction, and a consecutive term of twelve years for the deadly weapon enhancement.

²Barone v. State, 109 Nev. 778, 858 P.2d 27 (1993).

count of misdemeanor battery.³ Barone was sentenced to a term of six months in the Clark County Detention Center, to be served consecutively to his sentence in district court case no. C91406.

On November 18, 2003, Barone filed a proper person post-conviction petition for a writ of habeas corpus in the district court.⁴ The State opposed the petition. Barone filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Barone or to conduct an evidentiary hearing. On January 13, 2004, the district court denied Barone's petition. This appeal followed.

In his petition, Barone claimed that his double jeopardy rights have been violated. Specifically, Barone contended that although his felony battery conviction was overturned by this court, the Nevada Department of Corrections required him to serve the original ten-year sentence concurrently with his eight-year sentence for burglary in district court case no. C91406. Barone claimed that as a result of this, his eligibility for institutional parole from his burglary sentence was based on

³The district court entered an amended judgment of conviction on September 25, 1995.

⁴Barone labeled his petition an "amendment to petition for writ of mandamus and/or motion for judgment of satisfaction of sentence or in the alternative, withdrawal of plea." Because Barone is challenging the time he has served on his sentence, we elect to construe his filing as a petition for a writ of habeas corpus. See NRS 34.724(2)(c). To the extent that Barone's filing can be construed as a motion to withdraw a guilty plea, we note that his motion is barred by the equitable doctrine of laches. See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

his overturned ten-year sentence.⁵ Barone argued that he therefore should not be required to serve his six month sentence in the Clark County Detention Center after he has completed serving his sentence in case no. C91406.

A review of the record reveals that this claim is without merit. Barone's sentence for burglary in case no. C91406 was not scheduled to expire until June 11, 1996. On January 18, 1996, however, Barone was granted an institutional parole from his burglary sentence, and began serving the first of his two twelve-year sentences for robbery with the use of a deadly weapon. As such, Barone failed to establish that he was somehow required to concurrently serve his overturned ten-year felony battery sentence.

We further note that Barone is laboring under a misapprehension concerning the application of concurrent sentencing. Barone appears to believe that his ten-year sentence for felony battery was imposed to run concurrently with his eight-year sentence for burglary, and that his parole eligibility was consequently based on the ten-year sentence.⁶ However, Barone's original ten-year sentence was imposed to run concurrently with his entire sentence in case no. C91406—consecutive terms totaling thirty-two years. As such, it would have had no effect on his eligibility for institutional parole from his burglary sentence.


⁵See NRS 213.1213 (providing that "eligibility for parole from . . . concurrent sentences must be based on the sentence which requires the longest period before the prisoner is eligible for parole").

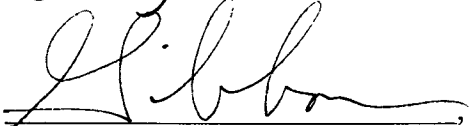
⁶See id.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Barone is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge
Anthony Barone Jr.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).