

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE PONTERI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47236

**FILED**

**JUL 19 2006**

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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stephen L. Huffaker, Judge.

On May 14, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted aggravated stalking. The district court sentenced appellant to serve a term of twenty-four to sixty months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period of five years. No direct appeal was taken.

On September 15, 2004, the State filed a notice of intent to seek probation revocation. The district court revoked appellant's probation and modified the sentence to a term of fifteen to sixty months in an amended judgment of conviction entered on January 5, 2005. No appeal was taken.

On January 27, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a response. 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 May 2, 2006, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than four and one-half years after entry of the judgment of conviction and more than one year after entry of the amended judgment of conviction.<sup>1</sup> Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>3</sup>

In an attempt to demonstrate cause for the delay, appellant argued that he had limited access to the law library due to the lockdown status of one of the institutions he was housed in, his transfer to a different institution, and his time spent in the infirmary. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause. Appellant failed to demonstrate that an impediment external to the

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<sup>1</sup>It is not clear from this court's review of the petition that appellant was challenging the validity of the original judgment of conviction and sentence or the revocation of his probation. If appellant was challenging the validity of the original judgment of conviction and sentence, his petition was untimely filed as it was filed four and one-half years after entry of the original judgment of conviction and sentence. Entry of an amended judgment of conviction would not provide good cause. See Sullivan v. State, 120 Nev. 537, 96 P.3d 761 (2004). To the extent that appellant was attempting to challenge the revocation of his probation or the modification of his sentence, the amended judgment of conviction is not good cause as appellant waited more than a year after entry of the amended judgment of conviction to file the petition. See id. at 541, 96 P.3d at 764.


<sup>2</sup>See NRS 34.726(1).


<sup>3</sup>See id.

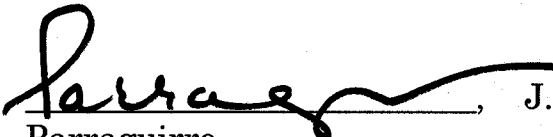
defense prevented him from complying with the time requirement.<sup>4</sup> Therefore, we affirm the order of the district court denying appellant's petition as procedurally time barred.

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.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Douglas

 J.  
Becker

 J.  
Parraguirre

cc: Eighth Judicial District Court Dept. 9, District Judge  
Lawrence Ponteri  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>4</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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