

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY LAMONT NOBLES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53208

FILED

SEP 25 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Miriam Shearing, Judge.

On August 7, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 72 to 180 months in the Nevada State Prison. The district court did not provide appellant with any credit for time served. On March 10, 2008, the district court entered an amended judgment of conviction providing appellant with 74 days of credit for time served. No appeal was taken.

On August 12, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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

January 13, 2009, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his trial counsel was ineffective for failing to challenge the deadly weapon enhancement. Appellant claimed that the deadly weapon enhancement was illegal. Appellant further claimed that the criminal complaint and information were defective for charging the deadly weapon enhancement with the primary offense. Finally, appellant appeared to claim that his double jeopardy rights were violated.

Appellant filed his petition more than five years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See *id.*

In an attempt to demonstrate cause for the delay, appellant argued that this court's decision in *Wilson v. State*, 121 Nev. 345, 114 P.3d 285 (2005) provided good cause. In *Wilson*, this court reversed three of four convictions involving the offense of using a minor in the production of pornography because the convictions were redundant.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition as procedurally time barred and without good cause.¹ Appellant's claims for relief were

¹Entry of the amended judgment of conviction does not provide good cause in the instant case because appellant did not challenge the
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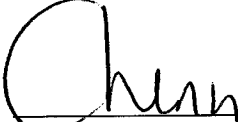
reasonably available within the time period for filing a timely post-conviction petition for a writ of habeas corpus. Hathaway v. State, 119 Nev. 248, 253, 71 P.3d 503, 506 (2003). This court's decision in Wilson does not provide good cause as the holding is inapplicable in this case; the determination of redundancy in Wilson does not alter this court's longstanding precedent that the deadly weapon enhancement does not violate double jeopardy. Woofter v. O'Donnell, 91 Nev. 756, 542 P.2d 1396 (1975) (rejecting a double jeopardy claim to NRS 193.165 and recognizing that there is no double jeopardy violation where the enhancement does not create a separate offense but provides for an additional penalty upon the finding of the prescribed fact). Further, even assuming that the holding in Wilson had any applicability, appellant did not demonstrate good cause for the entire length of his delay because he waited more than three years after Wilson was decided to file a post-conviction petition for a writ of habeas corpus. While a new decision may be good cause in certain circumstances (applicability and retroactivity of the decision), a delay of three years is patently unreasonable, and thus, the new decision would not provide good cause unless it explains the entire length of the delay. Hathaway, 119 Nev. at 252, 71 P.3d at 506. Therefore, we affirm the order of the district court.

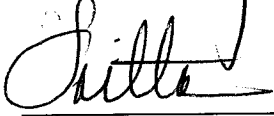
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amendment to the judgment of conviction. See Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

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. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Chief Judge, Second Judicial District
Hon. Miriam Shearing, Senior Justice
Anthony Lamont Nobles
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk