

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEN ROBERTS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71660

**FILED**

AUG 16 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Ken Roberts appeals from an order of the district court dismissing the “motion to vacate conviction/petition for postconviction relief act (PCRA) in the alternative motion to suspend/set aside/amend plea” he filed on July 29, 2015.<sup>1</sup> Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Roberts argues the district court erred by dismissing his petition and by denying his motion for leave to file a supplemental petition. The district court dismissed the petition and denied the motion for leave because Roberts was not in custody when he filed his petition.<sup>2</sup>

A postconviction petition for a writ of habeas corpus is not available to those who have completed the sentence imposed by the judgment of conviction and are no longer in custody. *See Nev. Const. art.*


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<sup>1</sup>Based on the nature of the claims raised and the relief sought in the motion/petition, we conclude the district court correctly construed the petition to be a postconviction petition for a writ of habeas corpus.

<sup>2</sup>Roberts had previously filed a notice of no supplement. It is within the discretion of the district court to allow further pleadings. *See NRS 34.750(5).*

6, § 6(1); NRS 34.724(1); *Jackson v. State*, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999). We conclude the district court did not err by dismissing the petition. Roberts' sentence expired in 2012, and he did not file the instant petition until July 29, 2015. Further, Roberts' claim he is technically still in custody on this sentence because he has been arrested and detained on immigration issues related to this conviction, is without merit. His sentence expired in 2012, and his federal custody status does not extend his sentence for a conviction he already expired. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge  
Oldenburg Law Office  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk