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Summary of Sullivan v. State, 120 Nev. Adv. Rep. 61

Z. Ryan Pahnke
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Sullivan v. State, 120 Nev. Adv. Rep. 61, 96 P.3d 761 (2004)¹

CRIMINAL LAW – HABEAS CORPUS

Summary

Appeal from a district court order denying appellant’s post-conviction petition for a writ of habeas corpus to consider whether the district court’s entry of an amended judgment of conviction provided good cause to extend the one-year limitation set forth in NEV. REV. STAT. 34.726(1) for filing a timely post-conviction petition for a writ of habeas corpus.

Disposition/Outcome

The district court’s order denying the post-conviction petition for writ of habeas corpus was affirmed.

Factual and Procedural History

On January 7, 1998, Sullivan pleaded guilty to one count each of robbery, burglary, and possession of stolen property. The original judgment of conviction contained a clerical error because it mistakenly pronounced Sullivan guilty of robbery with the use of a deadly weapon, when Sullivan had only pleaded guilty to simply robbery. On appeal, the judgment of conviction was confirmed, but the case was remanded to the district court in order to correct the mistake. A corrected judgment of conviction was entered on January 3, 2000 before the remittitur from the Nevada Supreme Court to correct the judgment issued on January 10, 2000.

On May 10, 001, Sullivan filed a post-conviction petition for a writ of habeas corpus. The State moved to dismiss the petition because it was untimely. However, the parties then decided to stipulate that Sullivan’s supplemental petition should be treated as timely because it was filed within one year of the when the amended judgment was actually entered. The petition was ultimately denied after the district court conducted an evidentiary hearing and this appeal by Sullivan followed.

Discussion

Even though the timeliness of the filing of the petition had been stipulated to by the parties, the Nevada Supreme Court discussed whether Sullivan’s post-conviction habeas petition was procedurally barred. The court first looked to NEV. REV. STAT. 34.726(1) which provides that a timely post-conviction habeas petition “must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur.” There is no language in the statute that addresses whether the one-year time period restarts if the judgment of conviction is amended. Therefore, the court found that to provide an extended period of time under NEV. REV. STAT. 34.726 would create an

¹ By Z. Ryan Pahnke

absurd result that could not have been intended by the legislature.² A district court may amend a judgment years and even decades after the original judgment of conviction is entered which would then restart the one-year time period. This would undermine the doctrine of finality of judgments by providing virtually no end to the filing of post-conviction habeas petitions.

When the Nevada Legislature enacted NEV. REV. STAT. 34.726, the “overall spirit was one of limiting habeas petitioners to one time through the [post-conviction] system absent extraordinary circumstances.”³ Therefore, NEV. REV. STAT. 34.726(1) requires that claims presented in an untimely post-conviction habeas petition must be dismissed as procedurally barred “unless there is good cause shown for the delay.”⁴ Sullivan failed to show good reason for the delay in filing the petition. Here, the claims were not related to and did not contest the clerical correction contained in the amended judgment of conviction. Instead, they all arose during the original proceedings and thus they could have been raised in a timely petition filed on or before January 10, 2001 which is one year after the Nevada Supreme Court issued the remittitur in the direct appeal. Therefore, the petition was improperly treated as timely under NEV. REV. STAT. 34.726 simply because it was filed within one year of the entry of the amended judgment of conviction notwithstanding the stipulation that the petition would be allowed entered into by both parties.

Conclusion

The district court denied Sullivan’s petition for habeas corpus and the Nevada Supreme Court affirmed, stating that the petition was untimely because it was filed approximately 14 months after the supreme court had issued a remittitur in the inmate’s direct appeal. Thus, the petition was improperly treated as timely under NEV. REV. STAT. 34.726 simply because it was filed within one year of the entry of the amended judgment. Additionally, even if the petition had been timely filed, Sullivan’s petition lacked merit because his guilty pleas were knowing and voluntary and his counsel was not ineffective.

² See *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

³ *Pellegrini v. State*, 117 Nev. 860, 875, 34 P.3d 519, 529 (2001).

⁴ NEV. REV. STAT. 34.726(1) provides in pertinent part that “For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court: (a) That the delay is not the fault of the petitioner; and (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.