IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-42812

OSCAR OROPEZA,

Petitioner-Appellant,

v.

STATE OF NEW MEXICO,

Respondent-Appellee.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY
Douglas R. Driggers, District Court Judge

Oscar Oropeza
Chaparral, New Mexico

Pro Se Appellant

Raúl Torrez, Attorney General
Santa Fe, NM

for Appellee

MEMORANDUM OPINION

WRAY, Judge.

{1} Petitioner appeals the district court's summary denial of his petition for post-sentence relief. Petitioner originally alleged that the district court did not have jurisdiction to try him for petty larceny, erred in determining his petition was not timely, and erred in not holding an evidentiary hearing on his petition. [DS 4-8] We proposed affirmance. In his memorandum in opposition, Petitioner continues to assert his original arguments and moves to amend the docketing statement to include five new issues. We deny Petitioner's motion to amend, and affirm.

{2} Petitioner continues to argue that the district court lacked jurisdiction to try him for the lesser included offense of larceny. [MIO 1-3] We are unpersuaded. Petitioner asserts that the liquor bottles he was found to have stolen did not have "some value" and did not constitute larceny because they were found empty outside in the trash. [MIO 2-3] Petitioner's assertion of error does not address the fact that there was evidence that he took the bottles when they were full and drank them in the parking lot. [RP 241-42] *See State v. Oropeza*, A-1-CA-36505, mem. op. ¶ 4 (N.M. Ct. App. June 20, 2018). Moreover, insofar as Petitioner challenges the sufficiency of the evidence of Petitioner's conviction, this Court has already determined that the State provided sufficient evidence to support Defendant's conviction. [2 RP 259-61] *Cf. Duncan v. Kerby*, 1993-NMSC-011, ¶ 3, 115 N.M. 344, 851 P.2d 466 (explaining that in the Rule 5-802 NMRA context, claims raised and rejected on direct appeal are not precluded when collateral review is requested on "facts beyond the record previously presented on appeal"). We therefore conclude Petitioner has not demonstrated reversible error on this point. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that "[a] party responding to a summary calendar notice must come forward and specifically point out errors of law and fact," and the repetition of earlier arguments does not fulfill that requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

{3} Petitioner also continues to argues that that the district court erred in determining his petition for post-sentence relief was not filed within a reasonable time after the completion of Petitioner's sentence. [MIO 3-6] Petitioner provided additional explanation for why his good time quarterly reports were not signed until 2023, claiming that the failure to sign these good time reports extended his parole. [Id.] As we identified in the calendar notice, Petitioner provides no authority to suggest that the termination of his parole was determined by the signatures on the good time reports rather than by the district court's entry of sentence. [CN 5] Petitioner was sentenced in 2017 [1 RP 209-12], and he completed serving his sentence in 2019 [3 RP 508]. Two additional years of parole, pursuant to the sentence, would have been completed in 2021. In any event, even if parole was not complete until 2023, Petitioner's discussion of the reasons his reports were unsigned until 2023 does not demonstrate that the district court abused its discretion in determining his February 2025 petition was not brought within a reasonable time of completion of the sentence—whether the sentence was completed in late 2023 or earlier. *See McGarrh v. State*, 2022-NMCA-036, ¶ 9, 514 P.3d 55.

{4} Petitioner lastly argues that the district court should have held an evidentiary hearing before summarily dismissing his petition. [MIO 6-9] As support, Petitioner continues to cite to Rule 5-803(F)(4) NMRA, which provides, "[i]f an evidentiary hearing is ordered, the hearing shall be conducted as promptly as practicable[,]" emphasizing the word "shall." [MIO 6] As stated in our proposed disposition, the language of Rule 5-803 indicates that an evidentiary hearing is discretionary, not mandatory. [CN 7] Petitioner's argument is therefore unavailing in light of the district court's summary denial of the motion without hearing. *See* Rule 5-803(F)(l). Petitioner's remaining arguments are unclear, and they do not persuade us that the district court abused its discretion in determining Petitioner was not entitled to relief from the face of the petition.

See McGarrh, 2022-NMCA-036, ¶ 9; *see also Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 ("We will not review unclear arguments, or guess at what [a party's] arguments might be.").

{5} Petitioner also moves to amend his docketing statement to include five new issues: during his original trial, the district court erred in asking Defendant a question from the jury on the stand (Issue 4) [MIO 9-11]; erred in admitting pictures from video surveillance (Issue 5) [MIO 11-13]; erred in denying his motion to exclude witnesses (Issue 6) [MIO 13-16]; erred in trying him outside the statute of limitations (Issue 7) [MIO 16-21]; and entered judgment with insufficient evidence (Issue 8) [MIO 21-24].

{6} In cases assigned to the summary calendar, this Court will grant a motion to amend the docketing statement to include additional issues if the motion (1) is timely, (2) states all facts material to a consideration of the new issues sought to be raised, (3) explains how the issues were properly preserved or why they may be raised for the first time on appeal, (4) demonstrates just cause or excuse by explaining why the issues were not originally raised in the docketing statement, and (5) complies in other respects with the appellate rules. *See State v. Rael*, 1983-NMCA-081, ¶ 15, 100 N.M. 193, 668 P.2d 309. However, we will deny motions to amend if the issue that the appellant is seeking to raise is not viable. *See State v. Munoz*, 1990-NMCA-109, ¶ 19, 111 N.M. 118, 802 P.2d 23 (stating that, if counsel had properly briefed the issue, we "would deny defendant's motion to amend because we find the issue [they] seek[] to raise to be so without merit as not to be viable").

{7} Petitioner has not demonstrated that amendment would be appropriate. Petitioner's Issues 6 and 8 were already addressed in his 2018 appeal, and Issue 4, 5, and 7 appear to be based on facts that could have been raised as part of that direct appeal. [2 RP 258-61] *See Oropeza*, A-1-CA-36505, mem. op. ¶ 4; *cf. Duncan*, 1993-NMSC-011, ¶ 3 ("When a defendant should have raised an issue on direct appeal, but failed to do so, [they] may be precluded from raising the issue in habeas corpus proceedings."); *State v. Kerby*, 2007-NMSC-014, ¶¶ 16-19, 141 N.M. 413, 156 P.3d 704 (explaining that the statute of limitations is not "jurisdictional" in a criminal case and can be waived). We therefore deny Petitioner's motion to amend. *See Rael*, 1983-NMCA-081, ¶ 15; *Munoz*, 1990-NMCA-109, ¶ 19.

{8} For the reasons stated in our notice of proposed disposition and herein, we affirm.

{9} IT IS SO ORDERED.

KATHERINE A. WRAY, Judge

WE CONCUR:

J. MILES HANISEE, Judge

GERALD E. BACA, Judge