

IN THE SUPREME COURT OF THE STATE OF NEVADA

MALCOLM GRAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50006

FILED

DEC 10 2007

JANETTE M. BLOOM
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 dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

On December 14, 1995, the district court convicted appellant, pursuant to a jury verdict, of one count of second degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on January 21, 1998. Appellant unsuccessfully sought post-conviction relief by way of two post-conviction petitions for writs of habeas corpus.²

On April 12, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Gray v. State, Docket No. 28156 (Order Dismissing Appeal, December 30, 1997).

²Gray v. State, Docket No. 46862 (Order of Affirmance, July 5, 2006); Gray v. State, Docket No. 39346 (Order of Affirmance, September 3, 2003).

State filed a motion to dismiss the petition, arguing that the petition was untimely and successive. Moreover, the State specifically pleaded laches. 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 August 20, 2007, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than nine years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was an abuse of the writ because he raised new and different claims from those litigated in the prior petitions.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁶

Appellant did not attempt to demonstrate good cause or overcome the presumption of prejudice to the State. Therefore, we conclude that the district court did not err in determining that the petition was procedurally barred and barred by laches.

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant stated on the face of the petition that none of the claims or facts was the same as those litigated previously. To the extent that appellant raised any of the same claims litigated in the prior proceedings, those claims were successive. See id.

⁵See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

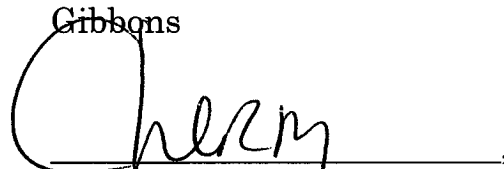
⁶See NRS 34.800(2).

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.⁷ Accordingly, we

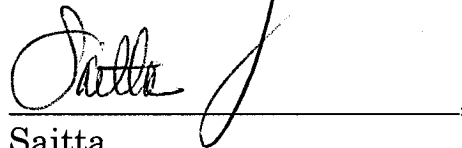
ORDER the judgment of the district court AFFIRMED.

 J.

Gibbons

 J.

Cherry

 J.

Saitta

cc: Hon. James M. Bixler, District Judge
Malcolm Gray
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).