

IN THE SUPREME COURT OF THE STATE OF NEVADA

LESTER LEE TELLIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50973

**FILED**

JUL 11 2008

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. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On July 2, 1987, the district court convicted appellant, pursuant to a jury verdict, of one count of first-degree kidnapping with the use of a deadly weapon, one count of attempted murder with the use of a deadly weapon, one count of illegal discharge of a firearm, one count of battery with the intent to commit a crime, one count of conspiracy to commit kidnapping and/or robbery, one count of conspiracy to commit battery, robbery or murder, and two counts of robbery with the use of a deadly weapon. The district court determined that the illegal discharge of a firearm count merged with the attempted murder count and ultimately dismissed that count in an amended judgment of conviction. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole and consecutive, determinate terms totaling 109 years. This court dismissed appellant's

appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on November 15, 1988.

On December 16, 1988, appellant filed a proper person petition for post-conviction relief pursuant to former NRS chapter 177 in the district court. The district court appointed counsel to represent appellant in the post-conviction proceedings. Post-conviction counsel supplemented the petition. The State opposed the petition. On May 30, 1990, the district court denied the petition. This court dismissed appellant's subsequent appeal.<sup>2</sup>

On July 17, 1993, appellant filed a second proper person petition for post-conviction relief pursuant to NRS chapter 177 in the district court. The State opposed the petition. On December 7, 1993, the district court denied the petition. This court's dismissed appellant's subsequent appeal.<sup>3</sup>

On December 16, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On March 6, 1997, the district court denied the petition. This court dismissed appellant's subsequent appeal.<sup>4</sup>

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<sup>1</sup>Tellis v. State, Docket No. 18476 (Order Dismissing Appeal, October 26, 1988).

<sup>2</sup>Tellis v. State, Docket No. 21018 (Order Dismissing Appeal, June 27, 1991).

<sup>3</sup>Tellis v. State, Docket No. 25572 (Order Dismissing Appeal, May 24, 1994).

<sup>4</sup>Tellis v. State, Docket No. 31986 (Order Dismissing Appeal, January 13, 1999).

On November 1, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing the petition was untimely. 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 December 27, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that there was not a probable cause determination within 48 hours of his arrest. Appellant sought reversal of his conviction and dismissal of the charges with prejudice.

Appellant filed his petition approximately nineteen years after this court issued the remittitur from his direct appeal and almost fourteen years after the effective date of NRS 34.726.<sup>5</sup> Thus, appellant's petition was untimely filed.<sup>6</sup> Moreover, appellant's petition was an abuse of the writ because he raised a new and different ground for relief than those grounds litigated in the prior post-conviction proceedings.<sup>7</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>8</sup> Further, because the State specifically pleaded laches,

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<sup>5</sup>1991 Nev. Stat., ch. 44, §§ 5, 33, at 75-6, 92; see also Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001).

<sup>6</sup>NRS 34.726(1).

<sup>7</sup>NRS 34.810(1)(b)(2); NRS 34.810(2).

<sup>8</sup>NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

appellant was required to overcome the presumption of prejudice to the State.<sup>9</sup>

Appellant did not set forth any good cause argument in support of his petition. Rather, it appeared that appellant believed that his petition was not subject to the procedural bars set forth in NRS 34.726, NRS 34.810 and NRS 34.800 because he designated provisions of the Nevada Constitution and NRS 34.185, NRS 34.320, and NRS 34.360 on the face of his petition.

NRS 34.724(2)(b) provides that a post-conviction petition for a writ of habeas corpus “[c]omprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them.” Because appellant’s petition challenged the validity of his judgment of conviction, appellant’s petition was properly construed to be a post-conviction petition for a writ of habeas corpus.<sup>10</sup> Thus, NRS 34.726, NRS 34.810 and NRS 34.800 were properly applied to his petition. Appellant did not demonstrate good cause to excuse his procedural defects and failed to overcome the presumption of laches. Therefore, we conclude that the district court properly procedurally barred the petition.

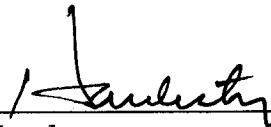
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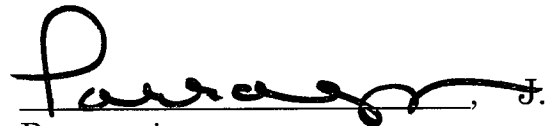
<sup>9</sup>NRS 34.800(2).

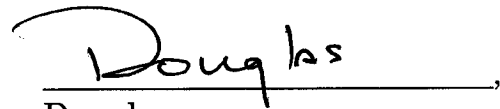
<sup>10</sup>NRS 34.724(2)(b).

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.<sup>11</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Lee A. Gates, District Judge  
Lester Lee Tellis  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>11</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).