

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CROSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51393

FILED

JAN 08 2010

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.

Appellant filed his petition approximately 18 years after this court issued remittitur from his direct appeal. Thus, appellant's petition was untimely filed.¹ See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition

¹Even assuming that the deadline for filing a habeas corpus petition commenced on January 1, 1993, the date of the amendments to NRS chapter 34, appellant's petition was filed more than 14 years after the effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44 § 5, at 75-76; Pellegrini v. State, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).

for a writ of habeas corpus.² See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

In an attempt to excuse his procedural defects, appellant argued that his claims were based on this court's decisions in Holmes v. State, 114 Nev. 1357, 972 P.2d 337 (1998), Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002) and Bolden v. State, 121 Nev. 908, 124 P.3d 191 (2005), all of which were decided after 1993, and could not have been filed within the statutory time period. Nonetheless, these cases were decided in 1998, 2002, and 2005, respectively. Thus, even if this court were to conclude that these decisions provided good cause for a part of appellant's delay in filing, appellant failed to demonstrate good cause for the entire length of his delay. See NRS 34.726(1). In addition, appellant failed to overcome the presumption of prejudice to the State. Therefore, the district court did not err in denying appellant's petition.³

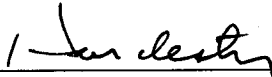
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

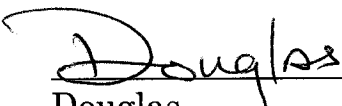
²To the extent appellant raised claims that were new and different from those raised in his previous petitions, those claims were an abuse of the writ. See NRS 34.810(2).

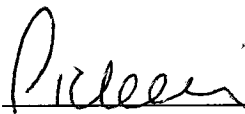
³We further conclude that the district court did not abuse its discretion in declining to appoint counsel in this case. NRS 34.750(1).

briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Eighth Judicial District Court Dept. 8, District Judge
Anthony Cross
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.