

IN THE SUPREME COURT OF THE STATE OF NEVADA

FORREST SUNDANCE MCGEE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51807

**FILED**

DEC 17 2008

TRACE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
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. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On August 7, 1997, the district court convicted appellant Forrest McGee, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve four consecutive terms of 30 to 156 months in the Nevada State Prison. No direct appeal was taken.

On July 31, 1998, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. After conducting an evidentiary hearing, the district court denied appellant's petition on July 15, 1999. This court dismissed appellant's appeal.<sup>1</sup>

On September 14, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

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<sup>1</sup>McGee v. Warden, Docket No. 34676 (Order Dismissing Appeal, December 3, 1999).

State opposed the petition. 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 May 8, 2008, the district court dismissed the petition. This appeal followed.

In his petition, appellant claimed as follows: (1) that the district court did not have jurisdiction to accept his guilty plea as he should have been tried in juvenile court, (2) that the direct certification of him as an adult violated his due process rights, (3) that his trial counsel informed him he had no right to a direct appeal, and (4) that his trial counsel coerced his guilty plea.<sup>2</sup>

Appellant filed his petition more than ten years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.<sup>3</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>4</sup> Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.<sup>5</sup> Further, appellant's petition constituted an abuse of the writ as his claims were new and different from those claims raised

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<sup>2</sup>Appellant was initially charged in juvenile court, but was automatically certified as an adult pursuant to NRS 62.040 (1995 Nev. Stat., ch. 444, § 2, at 1342). NRS 62.040 was repealed in 2003; however the relevant provision was incorporated into NRS 62B.330 (2003 Nev. Stat., ch. 206, § 47, at 1029).

<sup>3</sup>See NRS 34.726(1).

<sup>4</sup>See id.

<sup>5</sup>See NRS 34.810(2).

in his previous post-conviction petition for writ of habeas corpus.<sup>6</sup> Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.<sup>7</sup>

Appellant argued that the procedural bars should not apply to this petition because jurisdictional claims pursuant to NRS Chapter 34 can be raised at any time.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that this petition was procedurally barred. Appellant's petition is subject to the procedural bars in NRS 34.726(1) and NRS 34.810(2). Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects.<sup>8</sup> In addition, claims (1) and (3) were raised in his previous petition and, therefore, were successive.<sup>9</sup> Further, appellant failed to demonstrate that claims (2) and (4) were not available when he filed his previous petition.<sup>10</sup> Therefore, the district court did not err in denying appellant's petition as procedurally barred.

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<sup>6</sup>See id.

<sup>7</sup>See NRS 34.810(3).

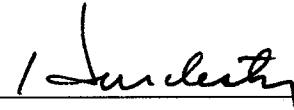
<sup>8</sup>See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

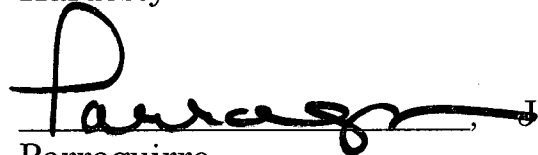
<sup>9</sup>See NRS 34.810(2).

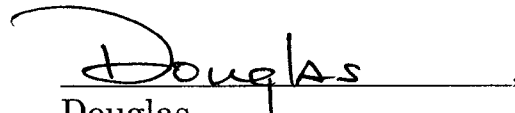
<sup>10</sup>See Hathaway, 119 Nev. at 252-53, 71 P.3d at 506.

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.<sup>12</sup>

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

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

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

cc: Hon. Jerome Polaha, District Judge  
Forrest Sundance McGee  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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

<sup>12</sup>We 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.