

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES WILLIAM BREWINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51867

FILED

NOV 21 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 dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On February 28, 1996, the district court convicted appellant, pursuant to a guilty plea, of second-degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. No direct appeal was taken.

On October 22, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss the petition. 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 May 20, 2008, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than 11 years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.¹

¹See NRS 34.726(1).

Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.² Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.³ A petitioner may be entitled to review of defaulted claims if the failure to review the claims would "result in a fundamental miscarriage of justice."⁴ In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence of the crime or ineligibility for the death penalty.⁵

In an attempt to excuse his procedural defects, appellant argued that his plea of guilty but mentally ill is unconstitutional and unenforceable, and the legal basis for his claim was not reasonably available until this court issued Finger v. State.⁶ He further claimed that a fundamental miscarriage of justice would occur because he was legally insane at the time of the crime.

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 time barred and barred by laches. First, appellant has failed to explain why he waited six years after the issuance of Finger to challenge the validity of his judgment of conviction.⁷ Second, appellant

²See NRS 34.726(1).

³See NRS 34.800(2).

⁴Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

⁵Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

⁶117 Nev. 548, 27 P.3d 66 (2001).

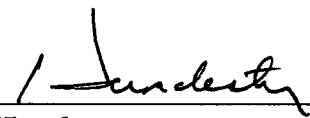
⁷See Hathaway v. State, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003) (requiring a petitioner to raise an appeal deprivation claim within a

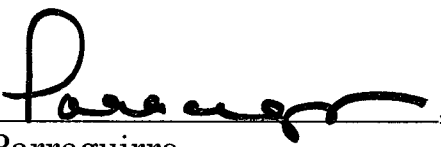
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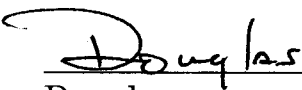
failed to allege any specific facts in support of his claim of insanity.⁸ Third, appellant failed to overcome the presumption of prejudice to the State given the lengthy delay in this case. Therefore, we affirm the order of the district court.

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

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reasonable time of learning that the petitioner had been deprived of a direct appeal).

⁸Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984); see also Finger, 117 Nev. at 576, 27 P.3d at 84-85 (holding that to be recognized as legally insane “a defendant must be in a delusional state such that he cannot know or understand the nature and capacity of his act, or his delusion must be such that he cannot appreciate the wrongfulness of his act, that is, that the act is not authorized by law”).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Jackie Glass, District Judge
Charles William Brewington
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk