

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD ELRY MORRISON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52073

**FILED**

JAN 15 2009

TRACEE 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 dismissing appellant Edward Morrison's post-conviction petition for writ of habeas corpus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

On February 25, 2005, the district court convicted appellant, pursuant to a jury trial, of burglary and petit larceny, and adjudicated appellant a habitual criminal pursuant to NRS 207.010(1). The district court sentenced appellant to serve concurrent terms of ten years to life for burglary, and five to twenty years for petit larceny in the Nevada State Prison. This court affirmed the judgment of conviction and sentence on appeal. Morrison v. State, Docket Number 44719 (Order of Affirmance, May 19, 2006). The remittitur issued on June 13, 2006. Appellant unsuccessfully sought post-conviction relief by way of a post-conviction petition for a writ of habeas corpus. Morrison v. State, Docket Number 48341 (Order of Affirmance, May 31, 2007).

On April 14, 2008, appellant filed a proper person post-conviction "First Amendment petition for writ of habeas corpus" in the district court. The 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 October 2, 2008, the district court dismissed appellant's petition. This appeal followed.

In his petition appellant claimed that he was not properly bound over to the district court on the petit larceny charge; that the State improperly informed the district court that appellant had been bound over for felony, not misdemeanor, petit larceny; that his conviction for felony petit larceny violated his due process rights; and that the initial charge of misdemeanor petit larceny against him should be dismissed for failure to prosecute.

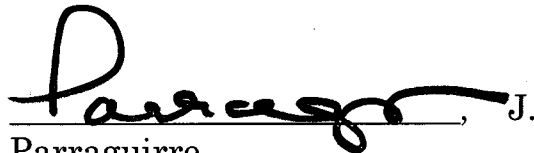
Appellant filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post conviction petition for a writ of habeas corpus on June 29, 2006. See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See NRS 34.726(1); NRS 34.810(1)(b).

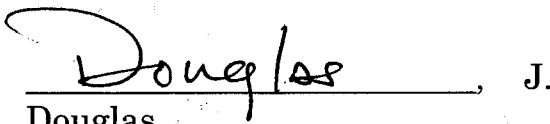
In an attempt to excuse the delay, appellant argued that his petition was a "First Amendment" petition for writ of habeas corpus pursuant to NRS 34.185, and not subject to the time limitations of NRS 34.726. NRS 34.185 addresses writ petitions "alleging an unconstitutional prior restraint of [a person's] rights pursuant to the First Amendment to the Constitution of the United States . . . ." NRS 34.726 applies to writ petitions that "challenge the validity of a judgment or sentence." Appellant's petition did not allege a prior restraint of his First Amendment rights. Rather, he took issue with the procedure by which he

was bound over to the district court on the petit larceny charge. His petition therefore challenged the validity of appellant's conviction, and was subject to the time limitations set forth in NRS 34.726. Because appellant did not otherwise demonstrate good cause for his delay in filing his petition, we conclude that the district court did not err in dismissing his petition.

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

ORDER the judgment of the district court AFFIRMED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. Valerie Adair, District Judge  
Edward Elry Morrison  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk