

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES H. PORTER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52250

**FILED**

MAR 05 2009

TRACE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  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; Donald M. Mosley, Judge.

On July 14, 1997, the district court convicted appellant, pursuant to a jury verdict, of one count each of first-degree kidnapping and sexual assault.<sup>1</sup> The district court adjudicated appellant as a habitual criminal and sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years for the kidnapping charge and a concurrent term of life without the possibility of parole for the sexual assault charge. This court affirmed the judgment of conviction and sentence on appeal. Porter v. State, Docket No. 30680 (Order Dismissing Appeal, September 24, 1999). The remittitur issued on October 20, 1999.

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<sup>1</sup>On July 22, 1997, an amended judgment of conviction was entered to correct a clerical error.

On September 11, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On December 7, 2000, the district denied the petition. This court affirmed the order of the district court on appeal. Porter v. State, Docket No. 37203 (Order of Affirmance, October 22, 2002).

On August 4, 2006, appellant filed a proper person motion to correct or vacate an illegal sentence in the district court. The State opposed the motion. On September 20, 2006, the district court denied the motion. This court affirmed the order of the district court on appeal. Porter v. State, Docket No. 48122 (Order of Affirmance and Directing Correction of Judgment of Conviction, April 6, 2007). On May 14, 2007, the district court entered an amended judgment of conviction.

On April 3, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that the petition was untimely and successive. 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 July 16, 2008, the district court dismissed the petition. This appeal followed.

In his petition, appellant claimed as follows: his convictions from California were inadmissible, his adjudication as a habitual offender should have been considered by a jury, he did not have three prior felony convictions, there was prosecutorial misconduct, there was a conspiracy between the Eighth Judicial District Court and the Nevada Supreme Court to correct an otherwise illegal judgment of conviction, a written amended judgment of conviction violated his right to be present for sentencing, correction of the judgment of conviction violated double

jeopardy, imposition of the habitual offender sentence violated separation of powers, the State did not properly acquire the power to incarcerate him, the kidnapping charge was incidental to the sexual assault conduct, the victim fabricated her testimony, there was no independent corroboration of the sexual assault, the district court erred by admitting prior bad act evidence and allowing that to prove his identity, the district court erred by admitting common plan or scheme evidence, the testimony of Jill White improperly vouched for the victim, the district court erred by not allowing expert testimony, and he was not given counsel at critical stages.

Appellant filed his petition more than eight years 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. See NRS 34.810(1)(b). Further, appellant's petition constituted an abuse of the writ as his claims were new and different from those claims raised in his previous post-conviction petition. 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).

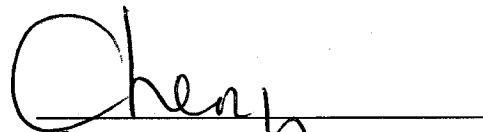
In an attempt to excuse his procedural defects, appellant claimed that the claims in his last petition were not federalized.

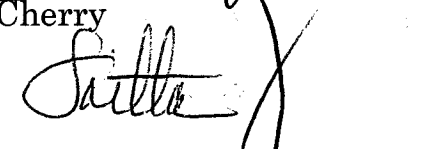
Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition as procedurally barred. Appellant failed to demonstrate that an impediment external to the defense excused the procedural defects. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); Lozada v. State, 110

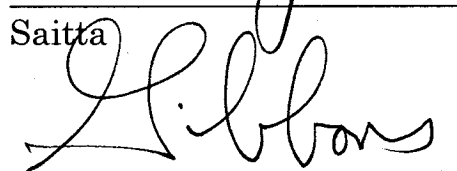
Nev. 349, 353, 871 P.2d 944, 946 (1994). Appellant's petition is subject to the procedural bars in NRS 34.726(1), NRS 34.810(1)(b), and NRS 34.810(2). That appellant filed a habeas petition in federal court without exhausting all federal claims in his first petition is not good cause. See generally Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). Further, appellant failed to demonstrate that he could not have raised his claims challenging his judgment of conviction and sentencing in his previous filings. See Hathaway, 119 Nev. at 252-253, 71 P.3d at 506. Finally, appellant failed to overcome the presumption of prejudice to the State. Therefore, we affirm the order of the district court dismissing the petition as procedurally barred and barred by laches.

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.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Donald M. Mosley, District Judge  
Charles H. Porter  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk