

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTIAN C. CAPLES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52388

**FILED**

DEC 04 2009

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.

On February 10, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of first-degree murder and one count of aggravated stalking. The district court sentenced appellant to serve a term of life with the possibility of parole after 20 years in the Nevada State Prison for the murder count and a concurrent term of 60 to 180 months for the stalking count. Appellant did not file a direct appeal.

On February 5, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel to represent appellant, and counsel filed a supplement to the petition. After hearing argument from counsel, the district court denied the petition. This court affirmed the decision of the district court. Caples v. State, Docket No. 45865 (Order of Affirmance, June 29, 2006).

On March 24, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

State opposed the petition and 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 August 18, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised six claims of ineffective assistance of counsel: (1) trial counsel failed to fully investigate and urged appellant to enter a guilty plea; (2) trial counsel failed to inform appellant of his rights to appeal; (3) trial counsel failed to fully explain the consequences of the plea; (4) trial counsel did not explain that the district court did not have to follow the recommendation in the plea agreement; (5) trial counsel failed to inform the district court that appellant was taking a psychotropic medication at the time the plea was entered; and (6) trial counsel did not prepare a defense for trial.

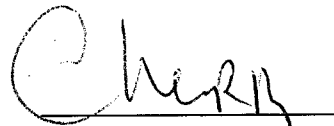
Appellant filed his petition more than five years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a petition for a writ of habeas corpus which raised the same claims and was decided on the merits. 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).

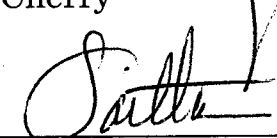
Appellant failed to allege any grounds for good cause to overcome the procedural bars. Further, to the extent that appellant's petition could be construed to raise a claim that he had good cause because he needed to exhaust his claims for his federal petition, this claim would not provide relief. Failure to exhaust state remedies does not excuse a


procedurally defaulted petition. See generally Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994) (holding that good cause must be an impediment external to the defense). Finally, appellant failed to overcome the presumption of prejudice to the State pursuant to NRS 34.800(2). Therefore, the district court properly denied the petition as procedurally barred.

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

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Cherry

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

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

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<sup>1</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.

cc: Eighth Judicial District Court Dept. 8, District Judge  
Christian C. Caples  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk