

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK DAVID KING A/K/A JACK  
DAVID GETZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52793

FILED

OCT 06 2009

ORDER OF AFFIRMANCE

THACKER K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing “petition for writ of habeas corpus (post conviction relief) or in the alternative motion for new trial/ or in the alternative motion to vacate and modify sentence and request for evidentiary hearing.” Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On April 27, 2000, the district court convicted appellant, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. On direct appeal, this court affirmed the judgment of conviction and sentence. Getz v. State, Docket No. 36107 (Order of Affirmance, March 13, 2002). The remittitur issued on April 9, 2002.

On March 13, 2003, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Counsel was appointed. On June 23, 2004, the district court

denied the petition. This court affirmed the order of the district court on appeal. Getz v. State, Docket No. 43515 (Order of Affirmance, March 28, 2006).

On September 6, 2008, appellant filed a post-conviction “petition for writ of habeas corpus (post conviction relief) or in the alternative motion for new trial/ or in the alternative motion to vacate and modify sentence and request for evidentiary hearing.” The State opposed the petition arguing that the petition was untimely and successive. Moreover, the State specifically pleaded laches. On November 24, 2008, the district court dismissed the petition. This appeal followed.

In his petition, appellant claimed as follows: (1) his trial counsel was ineffective for perpetuating obstruction of justice by participating in and failing to stop threats which forced appellant not testify to the whole truth; (2) his trial counsel was ineffective for failing to file a motion to suppress statements made to police officers in violation of Miranda v. Arizona, 384 U.S. 436 (1966); (3) trial counsel was ineffective for failing to call witnesses to testify at trial and at sentencing; (4) trial counsel broke attorney-client privilege by stipulating to admission of appellant’s clothing; and (5) trial counsel was ineffective for failing to suppress a gun that was not the murder weapon.

#### Post-Conviction Writ of Habeas Corpus

Appellant filed his petition more than six 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 for a writ of habeas corpus. See NRS 34.810(1)(b). Further, appellant’s

petition constituted an abuse of the writ as all of his claims were new and different from those claims raised in his previous post-conviction petition for writ of habeas corpus. 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(1)(b); 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 order to excuse his procedural defects, appellant claimed that he filed this petition in order to exhaust his claims in State court so that he could proceed federally and that he did not previously raise his claim that he was threatened into withholding information during trial because he feared for his family's safety.

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 defective. 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). Claims relating to threats that occurred prior to or during trial were available to be raised in a timely petition. That appellant is seeking to exhaust claims in order to proceed federally is not good cause. See generally Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). 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.

### Motion for New Trial

NRS 176.515(4) provides that a motion for a new trial based upon any grounds other than newly discovered evidence “must be made within 7 days after the verdict or finding of guilt or within such further time as the court may fix during the 7-day period.”

Appellant did not allege that his motion was based on newly discovered evidence and the motion was filed more than eight years after entry of the judgment of conviction. Therefore, we conclude that the district court properly dismissed the motion.

### Motion to Vacate and Modify Sentence

“[A] motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant’s criminal record which work to the defendant’s extreme detriment.” Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). A motion to modify a sentence that raises issues outside the very narrow scope of issues permissible may be summarily denied. Id. at 708-09 n.2, 918 P.2d at 325 n.2.

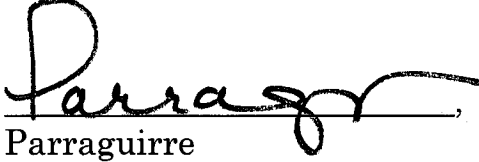
Our review of the record on appeal reveals that appellant’s claims fell outside the narrow scope of claims permissible in a motion to modify a sentence. Appellant failed to demonstrate that the district court relied upon a mistaken assumption about his criminal record that worked to his extreme detriment. Therefore, the district court did not err in denying this motion.

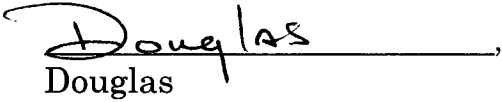
### Conclusion

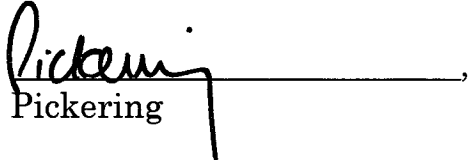
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

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.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

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

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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.