

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILES MANLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53056

**FILED**

**APR 08 2010**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an 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; Michael Villani, Judge.

Appellant filed his petition on July 16, 2008, more than four years after this court issued the remittitur from his direct appeal on June 29, 2004. See Manley v. State, Docket No. 41667 (Order of Affirmance, June 3, 2004). 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 and that petition was decided on the merits.<sup>1</sup> See 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(3).

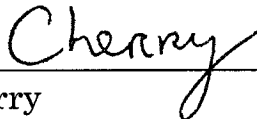
Appellant argues that the district court erred in denying his petition as procedurally barred because he received ineffective assistance of post-conviction counsel. This claim does not provide good cause for

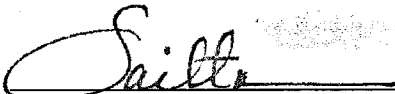
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<sup>1</sup>See Manley v. State, Docket No. 48319 (Order of Affirmance, July 17, 2007).

filing an untimely petition in this case. Appellant was not entitled to the effective assistance of post-conviction counsel because the appointment of counsel was discretionary and not required by the constitution or statute. See Crump v. Warden, 113 Nev. 293, 303 n.5, 934 P.2d 247, 253 n.5 (1997); McKague v. Warden, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996). Similarly, appellant's claim regarding the decision in Roper v. Simmons, 543 U.S. 551 (2005), relating to juveniles and the death penalty, does not provide good cause because Roper was decided nearly three years before appellant filed the instant petition. Thus, even if this court were to conclude that this decision provided good cause for a part of appellant's delay in filing, appellant fails to demonstrate good cause for the entire length of his delay. See NRS 34.726(1). Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Michael Villani, District Judge  
Ciciliano & Associates, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk