

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM E. ROPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53271

FILED

MAR 10 2010

TRACH 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 denying appellant's post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant filed his petition on October 21, 2008, over nine years after this court's April 23, 1999, issuance of the remittitur from his direct appeal. See Roper v. State, Docket No. 29953 (Order Dismissing Appeal, March 24, 1999). Appellant's petition was therefore untimely filed. See NRS 34.726(1). Furthermore, appellant's petition was both successive as to the claim that was disposed of on the merits in earlier proceedings and an abuse of the writ for claims he raised for the first time in the instant petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Thus,

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²See Roper v. State, Docket No. 36151 (Order of Affirmance, December 13, 2001); Roper v. State, Docket No. 39771 (Order of Affirmance, January 27, 2003).

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).

Appellant first argued he had good cause to file an untimely and successive petition because counsel never researched and developed the issues he raised therein. This was essentially a claim of ineffective assistance of counsel, which, to constitute good cause, must itself not be procedurally barred. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). However, the ineffective assistance of counsel claim was procedurally barred as appellant's April 23, 1999, remittitur from his direct appeal was issued over nine years prior to the filing of the instant petition.³ See NRS 34.726(1). Accordingly, this argument did not demonstrate good cause.

Appellant also argued he had good cause because he only recently learned that he could assert the retroactivity of a case as grounds for relief. Specifically, appellant argued that Mendoza v. State, 122 Nev. 267, 130 P.3d 176 (2006); Mitchell v. State, 122 Nev. 1269, 149 P.3d 33 (2006); Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002); and Bolden v. State, 121 Nev. 908, 124 P.3d 191 (2005), overruled on other grounds by Cortinas v. State, 124 Nev. ___, 195 P.3d 315 (2008), cert. denied ___ U.S. ___, 130 S. Ct. 416 (2009), should have been applied retroactively to his case, thereby resulting in a reversal of his kidnapping conviction. Even assuming, without deciding, that any of these cases supported the relief

³Because appellant was entitled to neither post-conviction counsel nor the effective assistance of such counsel, see McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), he could only have raised an ineffective assistance of counsel claim in regard to either trial or appellate counsel.

appellant sought, the instant petition would have had to have been filed within a year of any decision that afforded such relief. See Hathaway, 119 Nev. at 252-53, 71 P.3d at 506. As each of the cases relied upon by appellant was decided more than one year prior to the filing of the instant petition, none afforded good cause. Further, appellant's own ignorance of the law regarding the retroactive application of a case would not have demonstrated good cause. See Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988).

Finally, appellant failed to overcome the presumption of prejudice to the State that attached when the State specifically pleaded laches. See NRS 34.800(2). For the foregoing reasons, we conclude the district court did not err in denying appellant's petition and, consequently, his request for appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

⁴We 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: Hon. Donald M. Mosley, District Judge
William E. Roper
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk