

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL EUGENE ABRAHAM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53770

FILED

DEC 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingoson*
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; Elissa F. Cadish, Judge.

On January 28, 1994, the district court convicted appellant, pursuant to a jury verdict, of one count of first-degree kidnapping with the use of a deadly weapon and six counts of sexual assault with the use of a deadly weapon. The district court sentenced appellant to serve a total of six consecutive terms of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction and sentence. Abraham v. State, Docket No. 25368 (Order Dismissing Appeal, June 2, 1998). The remittitur issued on June 23, 1998. Appellant unsuccessfully sought post-conviction relief by way of a timely post-conviction petition for a writ of habeas corpus. Abraham v. State, Docket No. 34600 (Order of Affirmance, March 29, 2002).

On January 16, 2009, 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 filed and successive. Moreover, the State specifically pleaded laches. Pursuant

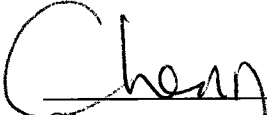
to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 23, 2009, the district court denied appellant's petition. This appeal followed.


Appellant filed his petition more than ten 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 and the claims were or could have been raised in the first petition. See NRS 34.810(1)(b)(2); 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 an attempt to excuse his procedural defects, appellant argued that he had good cause because he had not received his case files from counsel. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that the petition was procedurally barred. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects. Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). The claims were reasonably available during the period for filing a timely petition. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Trial counsel's failure to send the case files is not good cause. Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995). Appellant failed to overcome the presumption of prejudice to the State. Therefore, we affirm the order of the district court denying 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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Samuel Eugene Abraham
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹We have received the motion for appointment of counsel. In light of this court's disposition of the appeal, we deny the motion as moot.