

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53778

FILED

MAR 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingerson*
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; Elizabeth Goff Gonzalez, Judge.

Appellant filed his petition on February 27, 2009, more than ten years after the district court entered the judgment of conviction and sentence on November 19, 1998. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was also an abuse of the writ to the extent he raised claims that were new and different from those raised in his previously filed petition. 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

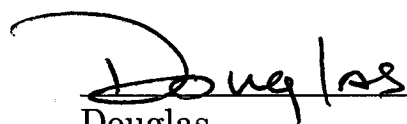
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).


State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

Appellant failed to demonstrate any impediment external to the defense that prevented him from filing his claims within the time limits of NRS 34.726(1). Hathaway v. State, 119 Nev. 248, 252-3, 71 P.3d 503, 506 (2003). Appellant's claim of ineffective assistance of counsel was not sufficient to establish good cause. Id. at 254, 71 P.3d at 507. Appellant's attempt to overcome his procedural defects by characterizing his petition as a "First Amendment Petition" also lacked merit, as appellant failed to allege any unconstitutional prior restraint of his First Amendment rights. See NRS 34.185. Finally, appellant failed to overcome the presumption of prejudice to the State pursuant to NRS 34.800(2). 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.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Jeffrey Davis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk