

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD T. FINLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53941

FILED

JAN 08 2010

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a third post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant filed his petition on February 13, 2009, more than seven years after this court issued the remittitur from his direct appeal, on November 5, 2001. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed two post-conviction petitions for writs of habeas corpus.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). To the extent that appellant raised any new claims for relief, those claims were also an abuse of the writ. NRS 34.810(2). Appellant's petition was procedurally barred

¹Finley v. State, Docket No. 40808 (Order of Affirmance, January 27, 2004). Appellant did not file an appeal from the January 21, 2009 order denying the second petition.

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).

Appellant did not attempt to overcome the procedural defects. With the exception of the presentence credits claim, appellant's claims could have been raised in a timely petition. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Regarding his claim for presentence credits, appellant did not demonstrate good cause for failing to raise the claim earlier than his 2009 petition. Griffin v. State, 122 Nev. 737, 744, 137 P.3d 1165, 1169 (2006) (recognizing that a claim for presentence credits should be raised on direct appeal or in a timely post-conviction petition for a writ of habeas corpus); Hathaway, 119 Nev. at 252-53, 71 P.3d at 506 (recognizing that a claim that was reasonably available to be raised earlier would not provide good cause to excuse a late petition). Even assuming that appellant demonstrated good cause, appellant failed to demonstrate prejudice because he was not entitled to the credits pursuant to NRS 176.055(1) as he was confined pursuant to another district court case during the period in question. See Hogan v. Warden, 109 Nev. 952, 860 P.2d 710 (1993). Therefore, we affirm the order of the district court denying the petition as procedurally barred and barred by laches.

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.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Michael Villani, District Judge
Edward T. Finley
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk