

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN CARLOS JACOBO GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54063

FILED

MAR 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Anderson*
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; David B. Barker, Judge.

Appellant filed his petition on March 23, 2009, approximately five years after this court issued the remittitur from his direct appeal on June 22, 2004.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed three post-conviction petitions for a writ of habeas corpus.³ See NRS 34.810(1)(b)(2); NRS 34.810(2). To the extent appellant raised claims that were new and different from those raised in his previous petitions, those claims were an abuse of the writ. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of

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).

²Garcia v. State, Docket No. 41001 (Order of Affirmance, May 28, 2004).

³Garcia v. State, Docket No. 46908 (Order of Affirmance, June 30, 2006). Appellant did not appeal the denial of two of his petitions.

good cause and prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Appellant failed to identify any impediment external to the defense that prevented him from filing his petition in a timely manner or from raising his claims in a prior petition. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). To the extent appellant argued that he does not speak or write the English language, this failed to establish good cause for the entire length of his delay, as appellant successfully filed three prior post-conviction petitions for a writ of habeas corpus. See Cobas v. Burgess, 306 F.3d 441, 444 (6th Cir. 2002) (concluding that petitioner's alleged inability to speak English was no excuse for his delay when the petitioner had previously filed several post-conviction motions and habeas corpus petitions in state court, even if petitioner had received assistance in drafting those petitions). Therefore, the district court did not err in denying appellant's petition as procedurally barred. 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. David B. Barker, District Judge
Juan Carlos Jacobo Garcia
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk