

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE T. SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54096

FILED

APR 08 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *A. Angerson*  
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.<sup>1</sup> Eighth Judicial District Court, Clark County; David Wall, Judge.

Appellant filed his petition on March 6, 2009, nearly three years after the district court entered the judgment of conviction and sentence on June 23, 2006.<sup>2</sup> Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.<sup>3</sup> 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 petition, those claims were an abuse of the writ. See NRS

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<sup>1</sup>This 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).

<sup>2</sup>This court dismissed appellant's appeal from the judgment of conviction and sentence as untimely. Smith v. State, Docket No. 47846 (Order Dismissing Appeal, February 28, 2007).

<sup>3</sup>See Smith v. State, Docket No. 50551 (Order of Affirmance, April 22, 2008).

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).

Appellant failed to demonstrate any impediment external to the defense sufficient to establish good cause for his delay in filing his petition. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). That appellant was seeking to exhaust claims in order to proceed federally did not provide good cause. See generally Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). Similarly, appellant's claim that counsel failed to file a direct appeal on his behalf did not demonstrate good cause. See Hathaway, 119 Nev. at 253, 71 P.3d at 507 (concluding that "an appeal deprivation claim is not good cause if that claim was reasonably available to the petitioner during the statutory time period"). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

<sup>4</sup>We 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 Wall, District Judge  
Willie T. Smith  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk