

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJARDI BATUCAN VIRAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54255

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [Signature]
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.¹ Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

Appellant filed his petition on April 14, 2009, nearly four years after this court issued the remittitur in his direct appeal. Viray v. State, 121 Nev. 159, 111 P.3d 1079 (May 26, 2005). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.² 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

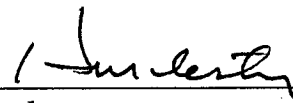
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

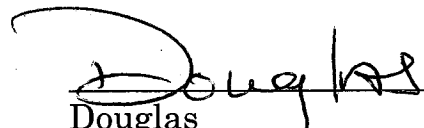
²See Viray v. State, Docket No. 47804 (Order of Affirmance, June 1, 2007).

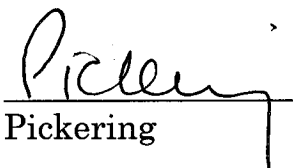
abuse of the writ. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

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 had not received a copy of his complete case file or trial transcripts at the time he filed his first post-conviction petition does not establish good cause for his delay in filing. See Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

³We 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: Chief Judge, Eighth Judicial District
Hon. Joseph T. Bonaventure, Senior Judge
Benjardi Batucan Viray
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk