

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRETT D. JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54312

FILED

MAY 10 2010

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY  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; Valorie Vega, Judge.

Appellant filed his petition on April 28, 2009, more than six years after the judgment of conviction was filed on January 24, 2003.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.³ See NRS 34.810(2). Further, appellant's petition constituted an abuse of the writ as some claims were new and different from those claims raised in his

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).

²No direct appeal was taken.

³Jones v. State, Docket No. 41510 (Order of Affirmance, March 18, 2004).

previous post-conviction 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).

To excuse the procedural defects, appellant first claimed that he was incompetent and had to rely on inmate law clerks for legal research. As appellant previously filed a proper person petition, appellant's incompetence and reliance on inmate law clerks did not explain the entire six-year delay. See Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988); see also Lewis v. Casey, 518 U.S. 343, 351-53 (1996).


Second, appellant claimed the failure to appoint post-conviction counsel and due process violations during the proceedings for his first petition provided good cause to raise additional claims in an untimely and successive petition. As appellant was not entitled to the appointment of post-conviction counsel for his first petition, he failed to demonstrate the failure to appoint counsel for his first petition provided good cause to raise claims in an untimely and successive petition. NRS 34.750(1); Crump v. Warden, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996). Further, appellant failed to demonstrate that any alleged due process violations during the proceedings for his first petition should excuse the more than five-year delay since the denial of that petition. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

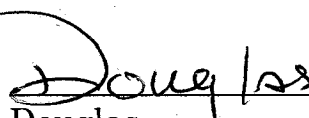
Third, appellant claimed the failure of his counsel to send him the trial transcripts should provide good cause. Counsel's failure to send appellant transcripts did not excuse the procedural defects. See Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995).

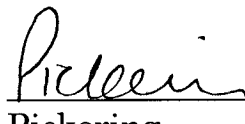
Next, appellant claimed he was actually innocent. In support of his claim, appellant argued the following: (1) his trial counsel was ineffective for failing to file a direct appeal, failing to inform him of the elements of the offense, failing to request a competency hearing, and coercing his guilty plea; (2) his plea was not entered knowingly and intelligently; (3) the plea canvass was insufficient; and (4) the district court should have held a competency hearing. Appellant failed to demonstrate that he was actually innocent, and he therefore failed to demonstrate that a fundamental miscarriage of justice should allow consideration of the above procedurally defaulted claims. See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Therefore, the district court did not err in applying the procedural bars in this case.

Having considered appellant's contentions and concluding that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Valorie Vega, District Judge
Brett D. Jones
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk