

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR ROBLES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54313

FILED

MAR 10 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 a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant filed his petition on May 15, 2009, almost eight years after this court issued remittitur from appellant's direct appeal on July 10, 2001.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See NRS 34.726(1).

Appellant's reliance on the Ninth Circuit Court of Appeals' decision in Chambers v. McDaniel, 549 F.3d 1191 (9th. Cir. 2008), to establish good cause is misguided. Chambers did not announce any new proposition, but rather discussed and applied decisions entered previously.

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 Robles v. State, Docket No. 35198 (Order of Affirmance, June 12, 2001).

Specifically, the Chambers court discussed and applied the decision in Polk v. Sandoval, 503 F.3d 903, 911 (9th Cir. 2007), which itself discussed this court's decision in Byford v. State, 116 Nev. 215, 235, 994 P.2d 700, 714 (2000) (receding from the reasonable doubt instruction provided in Kazalyn v. State, 108 Nev. 67, 825 P.2d 578 (1992)). Because it is the substantive holdings of Polk and Byford that appellant sought to apply in this case, it is those cases that provide the marker for filing timely claims. Appellant's 2009 petition was filed more than twenty months after entry of Polk and approximately nine years after this court's decision in Byford. In addition, this court determined on direct appeal that appellant was not entitled to the application of Byford. Should appellant wished to have further challenged this determination, this claim was available within a year after this court issued the remittitur in his direct appeal. See NRS 34.726(1). Under these circumstances, appellant failed to demonstrate good cause for the entire length of his delay. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

/s/ Ian Hardesty, J.
Hardesty

/s/ Douglas, J.
Douglas

/s/ Pickering, 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: Hon. Donald M. Mosley, District Judge
Arthur Robles
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk