

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN L. SCOTT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54329

**FILED**

**MAR 10 2010**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus and motion for the production of documents.<sup>1</sup> Eighth Judicial District Court, Clark County; David Wall, Judge.

Appellant filed his petition on May 4, 2009, almost five years after the issuance of the remittitur from his direct appeal on June 29, 2004.<sup>2</sup> 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 that was decided on the merits. 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>Scott v. State, Docket No. 39654 (Order Affirming in Part, Reversing in Part and Remanding, April 6, 2004).

34.810(1)(b)(2).<sup>3</sup> Further, appellant's petition constituted an abuse of the writ as he raised claims that were new and different from those claims raised in his previous post-conviction petition. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.

Appellant claimed he had good cause to excuse the procedural defects because he was incompetent and his appellate counsel should have raised this argument. This claim lacked merit because his competency claim was reasonably available to be raised in a timely petition and claims of ineffective assistance of counsel cannot serve as cause for another procedurally defaulted claim if they are themselves procedurally defaulted. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); see also Edwards v. Carpenter, 529 U.S. 446, 452-53 (2000). Further, that appellant sought to exhaust his claims for federal court purposes did not demonstrate good cause. See Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

Appellant also claimed that his sentence was illegal. Appellant's sentence was facially legal, NRS 205.273; NRS 205.690; NRS 207.010, and there was nothing in the record indicating that the district court was without jurisdiction to impose a sentence in this case. Accordingly, appellant's claims fell outside of the scope of a motion to correct an illegal sentence. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

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<sup>3</sup>Scott v. State, Docket No. 45564 (Order of Affirmance, April 18, 2006).

In addition, appellant sought an order compelling the State to send him records at State expense detailing his mental health treatment. The district court did not abuse its discretion in denying the motion.

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

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. David Wall, District Judge  
Steven L. Scott  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk