

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTIS LONDELL MOORE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54521

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
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.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant filed his petition on February 19, 2009, more than eight years after this court issued the remittitur from his direct appeal on August 7, 2000.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had

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 Moore v. State, Docket No. 34052 (Order Dismissing Appeal, July 10, 2000).

previously filed a post-conviction petition for a writ of habeas corpus.³ 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 petitions, those claims were an 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). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

Appellant failed to demonstrate any impediment external to the defense prevented him from filing his claims within the time limits of NRS 34.726(1). See Hathaway v. State, 119 Nev. 248, 252-3, 71 P.3d 503, 506 (2003). Appellant's claims that he received ineffective assistance of trial and appellate counsel were not sufficient to establish good cause. Id. at 254, 71 P.3d at 507. Appellant's claim that he received ineffective assistance of post-conviction counsel was also insufficient to establish good cause because appellant was not entitled to effective assistance of post-conviction counsel. See NRS 34.750; McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996).

Appellant also failed to establish good cause to the extent he claimed that his procedural defects should be excused with respect to his claims based on this court's decisions in Sharma v. State, 118 Nev. 648, 56

³See Moore v. State, Docket No. 44514 (Order of Affirmance, December 1, 2006).

P.3d 868 (2002) and Mitchell v. State, 122 Nev. 1269, 149 P.3d 33 (2006). Appellant filed his claims approximately 7 years after this court issued its decision in Sharma and approximately 3 years after this court issued its decision in Mitchell. Thus, even if these cases established good cause for a part of appellant's delay, appellant failed to establish good cause for the entire length of his delay in raising these claims. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

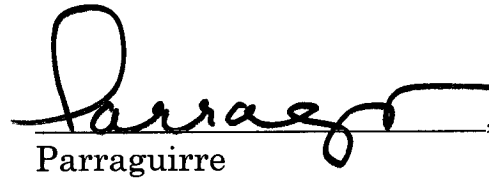
We further note that because the jury found appellant guilty of robbery with the use of a deadly weapon and conspiracy to commit robbery, appellant was clearly guilty of first-degree murder pursuant to NRS 200.030(1)(b). Similarly, because the jury found appellant guilty of conspiracy to commit robbery, the jury also necessarily found that appellant possessed the requisite intent to commit a felony to sustain appellant's conviction for burglary. See NRS 205.060. Therefore, appellant failed to demonstrate that he would be prejudiced by the denial of his claims pursuant to Sharma and Mitchell as procedurally barred.

Finally, for the reasons discussed above, to the extent appellant claimed that he was actually innocent pursuant to this court's holdings in Sharma and Mitchell, appellant failed to establish that "it is more likely than not that no reasonable juror would have convicted [appellant]" in light of these decisions. See Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Thus, appellant failed to establish any fundamental miscarriage of justice that would result from this court's failure to consider these claims. See Mazzan, 112 Nev. at 842, 921 P.2d at 922. We further conclude that appellant failed to overcome the

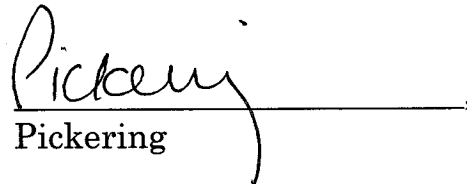
presumption of prejudice to the State pursuant to NRS 34.800(2).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, C.J.
Parraguirre

 _____, J.
Hardesty

 _____, J.
Pickering

cc: Hon. Michelle Leavitt, District Judge
Artis Londell Moore
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk