

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY W. GRIMALDI A/K/A  
TIMOTHY WENDELL GRIMALDI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54535

**FILED**

**MAR 11 2010**

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's sixth post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellant filed his petition on March 3, 2009, approximately thirty-five years after this court issued remittitur from his direct appeal on February 26, 1974. Thus, appellant's petition was untimely filed.<sup>2</sup> See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously pursued five post-conviction petitions for writs of habeas

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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>Appellant's petition was also filed more than sixteen years after the effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44 § 5, at 75-76; Pellegrini v. State, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).

corpus.<sup>3</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual 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 did not provide any specific arguments regarding why he should be permitted to file a late and successive petition. To the extent that appellant claimed that he was actually innocent, the claim of innocence lacked factual specificity and would not overcome application of the procedural bars in this case. Pellegrini, 117 Nev. at 887, 34 P.3d at 537; Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). In addition, appellant failed to overcome the presumption of prejudice to the State. Therefore, the district court did not err in denying appellant's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

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<sup>3</sup>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).

cc: Hon. David B. Barker, District Judge  
Timothy W. Grimaldi  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk