

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARBARO V. GRASS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54540

FILED

MAR 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingerson
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's "First Amendment Petition" for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant filed his petition on May 29, 2009, approximately 18 years after this court issued the remittitur from appellant's direct appeal on December 4, 1991. Thus, appellant's petition was untimely filed.² See

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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Appellant's petition is properly construed as a post-conviction petition for a writ of habeas corpus pursuant to NRS 34.724(2)(b).

²Even assuming that the deadline for filing a habeas corpus petition commenced on January 1, 1993, the date of the amendments to NRS chapter 34, appellant's petition was filed more than 16 years after the

continued on next page . . .

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). Appellant's petition was also an abuse of the writ to the extent he raised claims that were new and different from those raised in his previously filed petitions. 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). 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 that prevented him from filing his claims within the time limits of NRS 34.726(1). Hathaway v. State, 119 Nev. 248, 252-3, 71 P.3d 503, 506 (2003). Appellant's claim that the district court lacked jurisdiction to enter the judgment of conviction and sentence was patently without merit. Appellant's attempt to overcome his procedural defects by characterizing his petition as a "First Amendment Petition" also lacked merit, as appellant failed to allege any unconstitutional prior restraint of his First Amendment rights. See NRS 34.185. Finally, appellant failed to

... continued

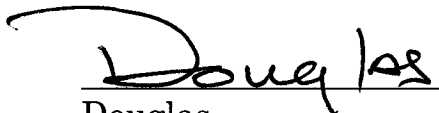
effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 5, at 75-76; Pellegrini v. State, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).

³See Grass v. State, Docket No. 52002 (Order of Affirmance, February 4, 2009); Grass v. State, Docket No. 27683 (Order Dismissing Appeal, June 23, 1998).

overcome the presumption of prejudice to the State pursuant to NRS 34.800(2). Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Donald M. Mosley, District Judge
Barbaro V. Grass
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk