

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLEN KOERSCHNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54718

FILED

FEB 04 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 post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on June 9, 2009, more than eight years after this court issued the remittitur from his direct appeal on May 23, 2001. Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.² 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 petition, 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).

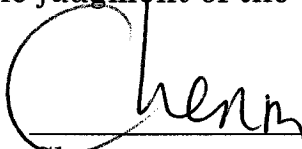
Appellant failed to demonstrate any impediment external to the defense sufficient to establish good cause for his delay in filing his

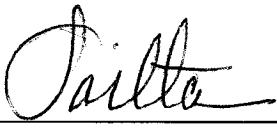
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

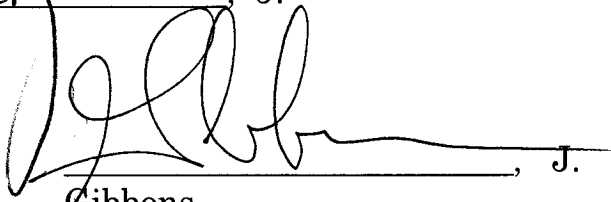
²See Koerschner v. State, Docket No. 43313 (Order of Affirmance, July 25, 2006).

petition. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). That appellant is seeking to exhaust claims in order to proceed federally is not good cause. See generally Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). The alleged failure of appellate and post-conviction counsel to pursue all claims requested by appellant also does not demonstrate good cause. See Hathaway, 119 Nev. at 252-53, 71 P.3d 506 (recognizing that a procedurally defaulted claim of ineffective assistance of counsel cannot serve as good cause); see also Crump v. Warden, 113 Nev. 293, 303, 934 P.2d 247, 253 (noting that a claim of ineffectiveness of post-conviction counsel cannot serve as good cause where the appointment of counsel is discretionary, and appellant is not entitled to the effective assistance of counsel). Therefore, the district court did not err in denying appellant's petition as procedurally barred.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

³We conclude that appellant's claim regarding subject matter jurisdiction is patently without merit.

⁴We 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. Elissa F. Cadish, District Judge
Allen Koerschner
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk