

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY H. PHILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54828

FILED

JUN 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingosou*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellant filed his petition on July 15, 2009, more than seven years after the judgment of conviction was entered on March 6, 2002.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he previously filed a post-conviction petition for a writ of habeas corpus.³ See NRS 34.810(2). 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

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).

²No direct appeal was taken.

³Philson v. State, Docket No. 41394 (Order of Affirmance, April 14, 2004).

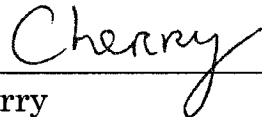
previous post-conviction petition. See id. Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).


To excuse the procedural defects, appellant claimed: (1) the district court's findings of fact for his first petition did not address all of the grounds raised, and (2) information showing that his trial counsel lied at the evidentiary hearing during the proceedings for his first petition was not reasonably available when he filed his first petition. That the district court's findings for appellant's first petition allegedly did not address all of the grounds raised did not excuse the more than five-year delay since the denial of appellant's first petition. See Hathaway v. State, 119 Nev. 248, 252 71 P.3d 503, 506 (2003). More importantly, the district court's findings did address all of the claims appellant raised in his first petition. In addition, the documents appellant provided in an attempt to disprove his trial counsel's evidentiary hearing testimony were reasonably available prior to the filing of appellant's first petition and therefore did not demonstrate good cause to excuse the procedural bars. See id.; Murray v. Carrier, 477 U.S. 478, 486 (1986). Further, appellant failed to overcome the presumption of prejudice to the State.


To the extent that appellant argued that his trial counsel's failure to file a direct appeal constituted good cause, the underlying claim was raised by appellant in his first petition and rejected by this court. Philson, Docket No. 41394 (Order of Affirmance, April 14, 2004). Therefore, this claim cannot constitute good cause to excuse the

procedural bars. Having concluded that the district court did not err in denying the petition as procedurally barred, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Kenneth C. Cory, District Judge
Roy H. Philson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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.