

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRYL O. CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54834

FILED

APR 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingersoll*
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; Abbi Silver, Judge.

Appellant filed his petition on August 5, 2009, more than twenty-two years after the district court entered the judgment of conviction and sentence on May 20, 1987.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was also an abuse

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. The petition was also filed more than sixteen years after the effective date of NRS 34.726(1). See 1991 Nev. Stat., ch. 44, § 33, at 92.

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 challenging his judgment of conviction within the time limits. Hathaway v. State, 119 Nev. 248, 252-3, 71 P.3d 503, 506 (2003). Appellant's claim of ineffective assistance of counsel was not sufficient to establish good cause. Id. at 254-55, 71 P.3d at 507-08. This court's decision in Griffin v. State, 122 Nev. 737, 137 P.3d 1165 (2006) would not provide good cause in the instant case because appellant waited more than three years to file his petition after the Griffin decision. Further, this court has determined that the 2007 amendments to NRS 193.165 do not apply retroactively, and thus this court's decision in State v. Dist. Ct. (Pullin), 124 Nev. ___, 188 P.3d 1079 (2008), would not provide good cause in the instant case.³ Appellant's attempt to overcome his procedural defects by characterizing his petition as a "First Amendment Petition" also lacked merit, as appellant failed to demonstrate any unconstitutional prior restraint of his First Amendment rights. See NRS 34.185. Finally, appellant failed to overcome the

³Appellant further filed the petition more than one year after Pullin was decided.

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.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Abbi Silver, District Judge
Darryl O. Clark
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk