

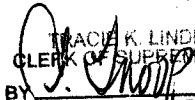
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN BENJAMIN ODOMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54877

**FILED**

MAY 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
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.<sup>1</sup> Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on July 8, 2009, approximately twenty-three years after this court issued the remittitur from his direct appeal on May 2, 1986. Thus, appellant's petition was untimely filed.<sup>2</sup> Moreover, appellant's petition was successive because he had previously pursued six post-conviction petitions for writs of habeas corpus. 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 petitions, those

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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>Further, appellant's petition was filed almost 16 years after the effective date of NRS 34.726. 1991 Nev. Stat., ch. 44, § 5, at 75-76 and § 33, at 92 (Effective January 1, 1993).

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 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).

In an attempt to overcome the procedural bars, appellant claimed that the district court lacked jurisdiction over the burglary count because the crime occurred at a business which was open to the public and because the State failed to prove intent to commit a felony. These claims do not demonstrate that the district court lacked jurisdiction over the burglary count. See Nev. Const. art. 6, § 6 (setting forth the jurisdiction of the district courts); 1981 Nev. Stat., ch. 295, § 1, at 551. Therefore, this claim did not demonstrate good cause and prejudice to overcome the procedural bars.

Appellant also claimed that he was actually innocent of burglary based on his claim that the district court lacked jurisdiction. Because appellant failed to demonstrate that the district court lacked jurisdiction over the burglary, appellant necessarily failed to demonstrate that he was actually innocent. See Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Appellant also claimed that he was actually innocent because the identification by the victim and witness were unreliable. The evidence that appellant claimed demonstrated his innocence was presented at trial. Further, on appeal this court determined that the victim and witness "identified Odoms based on their eyewitness observations at the time of the shooting [and that] [b]oth men had a sufficient time to see and observe Odoms [and that] [b]oth had a clear and

unobstructed view of Odoms.” Odoms v. State, 102 Nev. 27, 31, 714 P.2d 568, 570-71 (1986). Therefore, this claim failed to demonstrate that appellant was actually innocent and necessarily failed to overcome the procedural bars.

To the extent that appellant claimed that he received ineffective assistance of post-conviction counsel, this claim was previously raised and rejected by this court. See Odoms v. State, Docket No. 31533 (Order Dismissing Appeal, September 14, 2000). The doctrine of law of the case precludes further litigation of these issues. See Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). 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.

NRS 209.451(1)(d) provides that if an offender:

In a civil action, in state or federal court, is found by the court to have presented a pleading, written motion or other document in writing to the court which:

- (1) Contains a claim or defense that is included for an improper purpose, including, without limitation, for the purpose of harassing his opponent, causing unnecessary delay in the litigation or increasing the cost of the litigation;
- (2) Contains a claim, defense or other argument which is not warranted by existing law or by a reasonable argument for a change in existing law or a change in the interpretation of existing; or
- (3) Contains allegations or information presented as fact for which evidentiary support is not available or is not likely to be discovered after further investigation,

[he] forfeits all deductions of time earned by [him] before the commission of that offense or act, or forfeits such part of those deductions as the Director considers just.

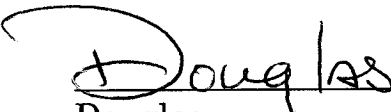
Appellant has filed numerous documents in the district court and this court raising substantially similar claims and claims that are not warranted by existing law or by a reasonable argument for a change in existing law.<sup>3</sup> In affirming the district court's order denying a post-conviction petition for a writ of habeas corpus in Docket No. 51415, this court cautioned appellant that a prisoner could forfeit all deductions of time earned by the prisoner if the court finds that the prisoner has filed a document in a civil action for an "improper purpose." A post-conviction petition for a writ of habeas corpus is a civil action. NRS 209.451(5). Appellant's continuous stream of filings is an abuse of judicial resources, thus the inclusion of these claims in this post-conviction petition for a writ of habeas corpus constitutes an improper purpose. The petition also contains claims and arguments not warranted by existing law or by a change in existing law. Therefore, we refer this matter to the Director of the Department of Corrections to determine what forfeiture, if any, is warranted. Accordingly, we

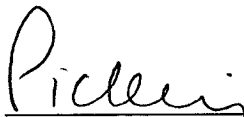
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<sup>3</sup>See Odoms v. State, Docket No. 18650 (Order Dismissing Appeal, December 29, 1988); Odoms v. State, Docket No. 29443 (Order Dismissing Appeal, November 20, 1998); Odoms v. State, Docket No. 31533 (Order Dismissing Appeal, September 14, 2000); Odoms v. State, Docket No. 37617 (Order of Affirmance, January 2, 2002); Odoms v. State, Docket No. 43495 (Order of Affirmance, September 22, 2004); Odoms v. State, Docket No. 44754 (Order of Affirmance, June 16, 2005); Odoms v. State, Docket No. 46049 (Order of Affirmance, December 21, 2005); Odoms v. State, Docket No. 51415 (Order of Affirmance, April 23, 2009).

ORDER the judgment of the district court AFFIRMED and REFER this matter to the Director of the Department of Corrections.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Elissa F. Cadish, District Judge  
John Benjamin Odoms  
Attorney General/Carson City  
Clark County District Attorney  
Director Howard Skolnik, Nevada Department of Corrections  
Eighth District Court Clerk