

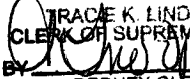
IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY JAY DELGADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54888

FILED

JUL 15 2010

TRACE 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 “First Amendment Petition” for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant filed his petition on April 2, 2009, more than eight years after issuance of the remittitur on direct appeal on December 12, 2000. Delgado v. State, Docket No. 34689 (Order of Affirmance, November 14, 2000). Thus appellant’s petition was untimely filed. See 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, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² See NRS 34.810(1)(b)(2); NRS

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).

²Delgado v. State, Docket No. 38909 (Order of Affirmance, April 8, 2004).

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).

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, 252-53, 71 P.3d 503, 506 (2003). Appellant's attempt to overcome his procedural defects by characterizing his petition as a "First Amendment Petition" lacked merit, as appellant failed to allege any unconstitutional prior restraint of his First Amendment rights. See NRS 34.185. Finally, appellant failed to 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.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Michael Villani, District Judge
Jerry Jay Delgado
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk