

IN THE SUPREME COURT OF THE STATE OF NEVADA

AUGUST ANTHONY ARDAGNA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54901

FILED

MAR 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.


Appellant filed his petition on July 11, 2008, seventeen years after entry of the judgment of conviction on January 30, 1991. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, it constituted an abuse of the writ as he raised claims new and different from those litigated in his previous petition.¹ 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(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of laches. NRS 34.800(2).


On appeal, appellant raises numerous good cause claims that were not raised below and we decline to entertain them for the first time on appeal. The only purported good cause claim raised on appeal that was

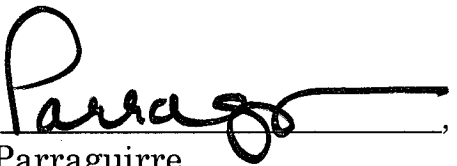
¹Adragna v. State, Docket No. 24105 (Order Dismissing Appeal, July 28, 1995).

also raised below is appellant's claim that counsel was ineffective for failing to inform appellant that he had the right to appeal his conviction and for failing to file a petition on appellant's behalf. Appellant fails to demonstrate that this claim provided good cause because an ineffective assistance of counsel claim cannot be good cause when the ineffective assistance of counsel claim is itself procedurally barred. See Hathaway v. State, 119 Nev. 248, 254, 71 P.3d 503, 507 (2003); Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998). Further, appellant failed to overcome the presumption of prejudice to the State. Therefore, the district court did not err in dismissing the petition as procedurally barred.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Saitta _____, J.


Hardesty _____, J.


Parraguirre _____, J.

²To the extent that appellant claims that his sentence is illegal because the deadly weapon enhancement violates Article I, § 8 of the Nevada Constitution, appellant fails to demonstrate that his sentence was facially illegal or that the district court lacked jurisdiction. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Further, this issue was previously raised and rejected by this court, Adragna v. State, Docket No. 50399 (Order of Affirmance, April 10, 2008), and the doctrine of law of the case prevents further litigation of this issue. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

cc: Hon. Connie J. Steinheimer, District Judge
Law Office of Thomas L. Qualls, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk