

IN THE SUPREME COURT OF THE STATE OF NEVADA

KYLE W. TURPIN, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55076

FILED

JUL 15 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

ORDER OF AFFIRMANCE BY S. Young
DEPUTY CLERK

This is a proper person appeal from orders of the district court denying a post-conviction petition for a writ of habeas corpus and a “motion for certified copies of judgment of his prior convictions.”¹ Eighth Judicial District Court, Clark County; David Wall, Judge.

Appellant filed his petition on August 27, 2009, more than three years after the remittitur from his direct appeal issued on May 17, 2006. State v. Turpin, Docket No. 44630, Turpin v. State Docket No. 44892 (Order Affirming in Part, Vacating in Part and Remanding, April 21, 2006). 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.² See

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).

²Turpin v. State, Docket No. 48509 (Order Affirming in Part, Reversing in Part and Remanding, March 17, 2009).

NRS 34.810(1)(b)(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 previous post-conviction petition. 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(1)(b)(2); NRS 34.810(3).

To overcome the procedural defects, appellant first claimed that his petition was filed within one year of the filing of the amended judgment of conviction on June 9, 2009. All of appellant's claims challenge counts from the original judgment of conviction and could have been raised in a timely post-conviction petition for a writ of habeas corpus, therefore the amended judgment of conviction did not provide good cause to raise these claims. See Sullivan v State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

Second, appellant claimed he had good cause to overcome the procedural defects because his appellate counsel refused to raise claims that appellant had asked to be included in his direct appeal because counsel had a conflict of interest. As appellant's claim of ineffective assistance of appellate counsel challenged the original judgment of conviction, it was untimely and without good cause because the ineffective assistance of counsel claim itself was procedurally barred. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); Edwards v. Carpenter, 529 U.S. 446, 452-53 (2000). Further, appellant failed to demonstrate an actual conflict of interest existed because he failed to demonstrate a situation in which his counsel's performance was adversely affected or was conducive to divided loyalties. Strickland v. Washington, 466 U.S. 668, 692 (1984) (citing Cuyler v. Sullivan, 446 U.S. 335, 348, 350

(1980)); Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. David Wall, District Judge
Kyle W. Turpin, Sr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Appellant failed to demonstrate that the district court abused its discretion by denying his “motion for certified copies of judgment of his prior convictions.”

We 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.