

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALVIN L. JAMISON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55088

FILED

JUN 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Doug Smith, Judge.

Appellant filed his petition on September 11, 2009, more than 13 years after the May 21, 1996, issuance of the remittitur on direct appeal. Jamison v. State, Docket No. 26233 (Order Dismissing Appeal, May 1, 1996). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Further, appellant's petition was successive because he had previously litigated a post-conviction petition for writ of habeas corpus.² See NRS 34.810(1)(b); NRS 34.810(2). Accordingly, appellant's petition was procedurally barred absent a demonstration of good cause and actual

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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²Jamison v. State, Docket No. 33828 (Order Dismissing Appeal, June 9, 2000).

prejudice. See NRS 34.726(1); NRS 34.810(1)(b)(2); NRS 34.810(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2). Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition as procedurally barred for the reasons discussed below.

First, appellant argued that he had good cause to excuse the procedural bars because he was denied physical access to the prison law library or to persons trained to assist him in legal matters and the prison's "paging system" violated federal law. Appellant failed to demonstrate that this constituted an impediment external to the defense in this case. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988).³

Second, appellant argued that he had good cause to excuse the procedural bars due to new case law regarding the first-degree murder jury instructions as discussed in Polk v. Sandoval, 503 F.3d 903 (9th Cir. 2007), disagreed with by Nika v. State, 124 Nev. ___, 198 P.3d 839 (2008), cert. denied, ___ U.S. ___, 130 S. Ct. 414 (2009), and Chambers v. McDaniel, 549 F.3d 1191 (9th. Cir. 2008). Appellant's reliance upon Polk

³To the extent appellant raised this claim as an independent ground for relief, it is not cognizable in a post-conviction petition for writ of habeas corpus. See NRS 34.724(1); Bowen v. Warden, 100 Nev. 489, 686 P.2d 250 (1984). Moreover, appellant did not claim that he was denied access to legal materials or denied the ability to file for relief. See Lewis v. State, 518 U.S. 343, 350, 360 (1996) (reiterating that the right to be protected is an appellant's "right of access to the courts" and that prisoners have no constitutional right to conduct generalized research) (citing Bounds v. Smith, 430 U.S. 817 (1977)).

and Chambers was misplaced as they did not announce any new proposition but rather discussed and applied decisions entered previously. Specifically, the Chambers court discussed and applied the decision in Polk, which itself discussed this court's decision in Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000). Because it is the substantive holdings of Polk and Byford that appellant sought to apply in this case, it is those cases that provide the marker for filing timely claims and not the later Chambers case, which merely discussed and applied those cases. Appellant's good cause argument regarding Polk failed because his petition was filed two years after entry of Polk and nine years after entry of Byford.⁴ Accordingly, appellant failed to demonstrate good cause for the entire length of his delay.

Finally, appellant failed to overcome the presumption of prejudice pursuant to NRS 34.800(2). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

⁴As appellant's conviction was final when Byford was decided, Byford would not have provided good cause in this case. See Nika, 124 Nev. at ___, 198 P.3d at 848.

cc: Hon. Doug Smith, District Judge
Alvin L. Jamison
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk