

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON L. PARISH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55130

FILED

JUN 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Appellant filed his petition on August 27, 2009, more than four years after the remittitur from his direct appeal issued on April 12, 2005.² 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 on February 3, 2006.³ See 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

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).

²Parish v. State, Docket No. 41891 (Order of Affirmance, March 17, 2005).

³Appellant did not appeal the district court's denial of the February 3, 2006, post-conviction petition for a writ of habeas corpus.

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); 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 claimed he had good cause to excuse the procedural defects because he was denied access to the prison law library and denied the assistance of legally trained clerks. Appellant failed to demonstrate an impediment external to the defense that would excuse the procedural defects. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). As appellant previously filed a proper person petition, the prison's alleged failure to provide access to the library or to prison law clerks did not explain the entire four-year delay. See generally Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988); see also Lewis v. Casey, 518 U.S. 343, 351-353 (1996). In addition, a post-conviction petition for a writ of habeas corpus is not the proper vehicle to raise challenges to conditions of confinement. Bowen v. Warden, 100 Nev. 489, 686 P.2d 250 (1984). Therefore, we affirm the order of the district court dismissing the petition as procedurally barred and we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Valorie Vega, District Judge
Brandon L. Parish
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk