

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAVAR G. VARNADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55249

FILED

JUL 15 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 denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellant filed his petition on May 29, 2009, more than five and one-half years after the district court entered the judgment of conviction and sentence on November 24, 2003.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was also an abuse of the writ to the extent he raised claims that were new and

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).

²No direct appeal was taken.

different from those raised in his previously filed petitions.³ 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(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 challenging his judgment of conviction within the time limits. Hathaway v. State, 119 Nev. 248, 252-3, 71 P.3d 503, 506 (2003). Appellant's claim of ineffective assistance of counsel was not sufficient to establish good cause. Id. at 254-55, 71 P.3d at 507-08. This court's decision in Griffin v. State, 122 Nev. 737, 137 P.3d 1165 (2006) would not provide good cause in the instant case because appellant waited almost three years to file his petition after the Griffin decision. Further, this court has determined that the 2007 amendments to NRS 193.165 do not apply retroactively, and thus this court's decision in State v. Dist. Ct. (Pullin), 124 Nev. ___, 188 P.3d 1079 (2008), would not provide good cause in the instant case. Appellant's attempt to overcome his procedural defects by characterizing his petition as a "First Amendment Petition" also lacked merit, as appellant failed to demonstrate any unconstitutional prior restraint of his First Amendment

³Varnado v. State, Docket No. 51375 (Order of Affirmance, August 29, 2008); Varnado v. State, Docket No. 44378 (Order of Affirmance, March 29, 2005).

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. David B. Barker, District Judge
Lavar G. Varnado
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk