

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR WILLIAMS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55320

FILED

JUN 10 2010

TRACE 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 a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on September 22, 2009, more than twenty-two years after the remittitur from direct appeal issued on April 21, 1987. Williams v. State, 103 Nev. 106, 734 P.2d 700 (1987). Thus, appellant's petition was untimely filed.² See NRS 34.726(1). Further, appellant's petition was successive because he previously litigated seven

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).

²The petition was further filed more than sixteen years after the effective date of NRS 34.726(1).

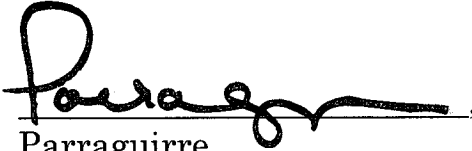
post-conviction petitions.³ See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice. NRS 34.800(2).

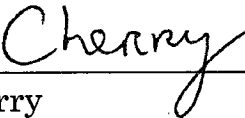
Appellant claimed that any delay in raising a double jeopardy claim, relating to the State's filing of charges after the district court had granted a pretrial petition for a writ of habeas corpus, was not attributable to him as he had filed numerous post-conviction matters and these matters were not decided on the merits.⁴ This explanation does not provide good cause as appellant's double jeopardy claim was reasonably available to be raised in a timely petition. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). To the extent that appellant claimed that a fundamental miscarriage of justice should overcome the application

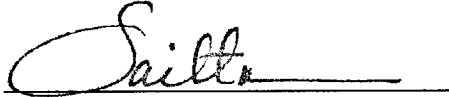
³Williams v. State, Docket No. 53771 (Order of Affirmance, October 27, 2009); Williams v. State, Docket No. 51721 (Order of Affirmance, January 8, 2009); Williams v. State, Docket No. 40403 (Order of Affirmance, August 20, 2003); Williams v. State, Docket No. 39244 (Order of Affirmance, December 4, 2002); Williams v. State, Docket Nos. 34857, 35368 (Order Dismissing Appeal and Order, March 17, 2000); Williams v. State, Docket No. 19470 (Order Dismissing Appeal, June 29, 1989).

⁴We note that appellant incorrectly characterized the grant of his pretrial petition as an acquittal. State v. District Court (Warren), 114 Nev. 739, 742, 964 P.2d 48, 50 (1998). The word "permanent" in the order granting the pretrial petition had no effect. Id.

of the procedural bars, appellant failed to demonstrate that he was actually innocent. Calderon v. Thompson, 523 U.S. 538, 559 (1998); Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Accordingly, we ORDER the judgment of the district court AFFIRMED.⁵


Parraguirre, C.J.


Cherry, J.


Saitta, J.

cc: Hon. Elissa F. Cadish, District Judge
Oscar Williams Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁵We 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.