

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRYL ANTHONY WILLIAMS,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
GREGORY SMITH,
Respondent.

No. 55408

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 Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

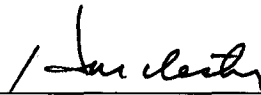
Appellant filed his petition on June 15, 2009, more than seven years after this court issued the remittitur from direct appeal on June 4, 2002. Williams v. State, Docket No. 39177 (Order of Affirmance, May 9, 2002). Thus, appellant's untimely petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See NRS 34.726(1). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. NRS 34.800(2).

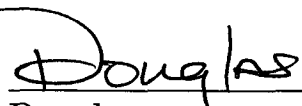
Appellant's petition was a challenge to the validity of the judgment of conviction and thus NRS 34.726 and NRS 34.800 apply to this

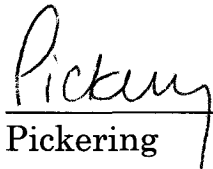
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

petition.² NRS 34.724(2)(b). Appellant's claim that he had good cause due to alleged errors in proceedings relating to a motion to correct an illegal sentence did not excuse the delay in this case, and the claims raised in the petition could have been raised in a timely petition. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). To the extent that appellant relied on this court's decision in Griffin v. State, 122 Nev. 737, 137 P.3d 1165 (2006) as good cause, Griffin would not provide good cause in the instant case because appellant waited approximately three years to file his petition after the Griffin decision. Appellant's claim that a fundamental miscarriage of justice excused the procedural defects was without merit as he 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). Appellant further failed to overcome the presumption of prejudice to the State. Therefore, we conclude that the district court did not err in denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

²Appellant's petition did not implicate the First Amendment. See NRS 34.185.

cc: Hon. Brent T. Adams, District Judge
Darryl Anthony Williams
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk