

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP MINOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55481

FILED

NOV 08 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 “First Amendment petition writ of habeas corpus.”¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on August 18, 2009, twenty-three years after entry of the judgment of conviction on February 25, 1986.² Thus, appellant’s petition was untimely filed, and was procedurally barred

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).


²An amended judgment of conviction to correct a clerical error was entered on May 6, 1986.

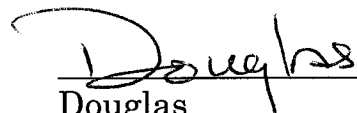
Even assuming that the deadline for filing a habeas corpus petition commenced on January 1, 1993, the date of the amendments to NRS chapter 34, appellant’s petition was filed more than 16 years after the effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 5, at 75-76; Pellegrini v. State, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).

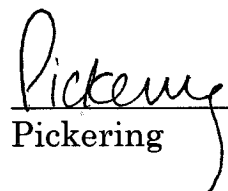
absent a demonstration of cause for the delay and undue prejudice. See NRS 34.726(1). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of laches. NRS 34.800(2).

Appellant failed to demonstrate any impediment external to the defense that prevented him from filing his claims within the time limits of NRS 34.726(1). Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Appellant's attempt to overcome his procedural defects by characterizing his petition as a "First Amendment Petition" lacked merit, as appellant failed to demonstrate any unconstitutional prior restraint of his First Amendment rights. See NRS 34.185. Further, appellant failed to overcome the presumption of prejudice to the State. Finally, to the extent that appellant claimed that Griffith v. State, 122 Nev. 737, 137 P.3d 1165 (2006), provided good cause, appellant failed to demonstrate good cause because he waited more than three years after that case was decided to file the instant petition. Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Elissa F. Cadish, District Judge
Phillip Minor
Attorney General/Carson City
Clark County District Attorney
Eighth Judicial District Court Clerk