

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL STEVE COX A/K/A STEVEN
MICHAEL COX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55109

MICHAEL STEVE COX A/K/A STEVEN
MICHAEL COX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55529

FILED

JUN 09 2010

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

ORDER OF AFFIRMANCE IN DOCKET NO. 55109 AND ORDER
ADMINISTRATIVELY CLOSING APPEAL IN DOCKET NO. 55529

These are proper person appeals from orders 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.

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).

Docket No. 55109

Appellant filed his petition on July 7, 2009, more than twelve years after this court issued the remittitur from his direct appeal, on May 13, 1997. Cox v. State, Docket No. 26457 (Order Dismissing Appeal, April 24, 1997). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated a post-conviction petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). To the extent that appellant raised any new claims for relief, those claims were also an abuse of the writ. 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 set forth no cogent good cause arguments to excuse his procedural defects.³ To the extent that appellant argued a fundamental miscarriage of justice should overcome the procedural defects, appellant did not show that it is more likely than not that no

²Cox v. State, Docket No. 27045 (Order Dismissing Appeal, April 10, 1998).

³In one of appellant's supplemental documents, he included the citations for Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000), Polk v. Sandoval, 503 F.3d 903, 911 (9th Cir. 2007), and Chambers v. McDaniel, 549 F.3d 1191 (9th. Cir. 2008). No cogent argument was offered as to how these cases would provide good cause. None of these cases would provide good cause in this case because appellant's conviction was final long before the Byford decision. Nika v. State, 124 Nev. ___, ___, ___, 198 P.3d 839, 848, 850 (2008), cert. denied, ___ U.S. ___, 130 S. Ct. 414 (2009).

reasonable juror would have convicted him in light of new evidence. Calderon v. Thompson, 523 U.S. 538, 559 (1998); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). 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 as procedurally barred, and we affirm the order of the district court denying the petition.

Docket No. 55529

Appellant filed a second notice of appeal from the district court's second order denying the July 7, 2009, post-conviction petition for a writ of habeas corpus. Upon receipt of the second notice of appeal, the clerk of this court inadvertently docketed the second notice of appeal as a new matter in Docket No. 55529. We direct the clerk of this court to administratively close the appeal in Docket No. 55529. Accordingly, we

ORDER the judgment of the district court AFFIRMED in Docket No. 55109 and ADMINISTRATIVELY CLOSE THE APPEAL in Docket No. 55529.

Cherry J.
Cherry

Saitta J.
Saitta

Gibbons J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Michael Steve Cox
Steven Michael Cox
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk