

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN BROOKS A/K/A RALPH KEVIN
CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55775

FILED

SEP 10 2010

TRACIE 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; David B. Barker, Judge.

Appellant filed his petition on December 30, 2009, almost 18 years after issuance of the remittitur on direct appeal on January 8, 1992. Brooks v. State, Docket No. 21722 (Order Dismissing Appeal, December 20, 1991). Thus, appellant's petition was untimely filed. See NRS 34.726(1); Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).² Moreover, appellant's petition was successive because he had

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).

²We note that the petition was also untimely from the January 1, 1993, effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 5, at 75-6.

previously filed four post-conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous 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 rebuttable presumption of laches. NRS 34.800(2).

To excuse the procedural bars, appellant claimed that the district court lacked jurisdiction to try him because the justice of the peace who conducted his preliminary hearing was not qualified. This court has ruled three times previously that this issue lacked merit. Brooks v. State, Docket No. 40941 (Order of Affirmance, January 28, 2004); Brooks v. State, Docket No. 34575 (Order of Affirmance, February 22, 2001); Brooks v. State, Docket No. 46807 (Order of Affirmance, July 14, 2006). The doctrine of law of the case prevents further litigation of the underlying claim and cannot be avoided by a more detailed and precisely focused argument. See Hall v State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, appellant failed to demonstrate cause to overcome the

³Brooks v. State, Docket No. 26131 (Order Dismissing Appeal, November 9, 1994); Brooks v. State, Docket No. 34575 (Order of Affirmance, February 22, 2001); Brooks v. State, Docket No. 43621 (Order of Affirmance, November 3, 2004); Brooks v. State, Docket No. 46807 (Order of Affirmance, July 14, 2006).

procedural bars. Further, appellant failed to overcome the presumption of prejudice to the State.

Next, appellant claimed he was actually innocent because the State failed to provide notice of the charges against him. Appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also 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). We therefore conclude that the district court did not err in denying appellant's petition.

As appellant has repeatedly raised his claim regarding the jurisdiction of the district court and the qualifications of the justice of the peace, he is cautioned that an inmate may have statutory good time and work time credit forfeited if the inmate, in a civil action, submits a pleading or other document to the court that:

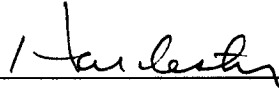
(1) Contains a claim or defense that is included for an improper purpose, including, without limitation, for the purpose of harassing [his] opponent, causing unnecessary delay in the litigation or increasing the cost of the litigation;

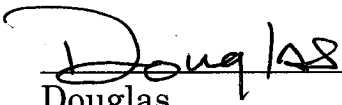
(2) Contains a claim, defense or other argument which is not warranted by existing law or by a reasonable argument for a change in existing law or a change in the interpretation of existing law; or

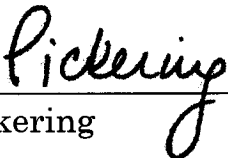
(3) Contains allegations or information presented as fact for which evidentiary support is not available or is not likely to be discovered after further investigation.

NRS 209.451(1)(d).

A post-conviction petition for a writ of habeas corpus is a civil action for the purposes of NRS 209.451. NRS 209.451(5). Accordingly, we ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. David B. Barker, District Judge
Kevin Brooks
Ralph Kevin Clark
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We 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.