

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY G. HEWITT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55776

FILED

SEP 09 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 Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant filed his petition on November 12, 2009, more than five and one-half years after the district court entered the judgment of conviction and sentence on April 6, 2004.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was also an abuse of the writ to the extent he raised claims that were new and different from

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).

²No direct appeal was taken.

those raised in a prior petition.³ See 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(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 failed to demonstrate any impediment external to the defense prevented him from raising his claims challenging his judgment of conviction within the time limits. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). To the extent that appellant suggested ineffective assistance of counsel excused his defects, appellant's claim of ineffective assistance of counsel was not sufficient to establish good cause. Id. This court's decision in Griffin v. State, 122 Nev. 737, 137 P.3d 1165 (2006), would not provide good cause in the instant case because appellant waited more than three years to file his petition after the Griffin decision. Appellant failed to demonstrate any of his claims implicated the jurisdiction of the court in the instant case. Nev. Const. art. 6, § 6; NRS 171.010. Appellant's attempt to overcome his procedural defects by characterizing his petition as a "First Amendment Petition" also lacked merit, as appellant failed to demonstrate any unconstitutional prior restraint of his First Amendment rights. See NRS 34.185(1). Finally, appellant failed to overcome the presumption of prejudice to the State

³Hewitt v. State, Docket No. 49520 (Order of Affirmance, December 10, 2007).

pursuant to NRS 34.800(2). Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Donald M. Mosley, District Judge
Tony G. Hewitt
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk