

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUDIBERTO GUERRERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55789

ALBERTO GUERRERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55790

FILED

NOV 01 2010

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

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying two post-conviction petitions for writs of habeas corpus.¹ Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

Appellants filed their petitions on December 30, 2009, eight years after issuance of the remittitur on direct appeal on December 21, 2001. See Guerrero v. State, Docket No. 32173 (Order of Affirmance, November 19, 2001). Thus, appellants' petitions were untimely filed. See NRS 34.726(1). Moreover, appellants' petitions were successive because

¹These appeals have 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).

they had previously filed several post-conviction petitions for a writ of habeas corpus, and the petitions constituted an abuse of the writ as they raised claims new and different from those raised in their previous petitions.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellants' petitions were 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, appellants were required to overcome the rebuttable presumption of laches. NRS 34.800(2).

Both appellants filed identical petitions alleging identical claims for relief. Appellants did not provide a cogent argument that they had cause for the delay. To the extent that they argued that the procedural bars did not apply because they were challenging the constitutionality of the laws, the jurisdiction of the courts, and this court's interpretation of NRS 193.165, appellants' argument was without merit. Appellants' claims challenged the validity of the judgment of conviction, and thus, the procedural bars did apply in this case.³ See NRS 34.720(1); NRS 34.724(1).

Next, appellants appeared to argue that a fundamental miscarriage of justice should overcome application of the procedural bars.

²See Guerrero v. State, Docket No. 41023 (Order of Affirmance, March 23, 2004); Guerrero v. State, Docket No. 41024 (Order of Affirmance, March 25, 2004); Guerrero v. State, Docket Nos. 53441, 53839, 53943 (Order of Affirmance, September 10, 2010).

³Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.

Specifically, they argued that their due process rights had been violated because the laws reproduced in the Nevada Revised Statutes did not contain an enacting clause as required by the Nevada Constitution. Nev. Const. art. 4, § 23. They further claimed that NRS 193.165 had been erroneously interpreted and applied. Appellants did not demonstrate a fundamental miscarriage of justice as their arguments fell short of demonstrating actual innocence.⁴ Calderon v. Thompson, 523 U.S. 538, 559 (1998); 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). Appellants failed to overcome the presumption of prejudice to the State. We therefore conclude that the district court did not err in denying appellants' petitions.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

⁴We note that the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes reproduce those laws as classified, codified, and annotated by the Legislative Counsel. NRS 220.120.

⁵We further conclude that the district court did not err in denying the requests for a writ of mandamus or declaratory judgment. NRS 34.170.

cc: Hon. Abbi Silver, District Judge
Alberto Guerrero
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk