

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY H. PHILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55827

FILED

JAN 24 2011

TRACIA K. LINDEMAN
CLERK OF SUPREME COURT
BY 
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, or alternatively, a petitioner for a writ of mandamus or request for declaratory judgment.¹ Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellant filed his petition on December 31, 2009, more than seven years after entry of the judgment of conviction on March 6, 2002. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.² See NRS 34.810(2). Appellant's petition was procedurally

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).

²Philson v. State, Docket No. 41394 (Order of Affirmance, April 14, 2004); Philson v. State, Docket No. 54828 (Order of Affirmance, June 9, 2010).

barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Appellant first argued that the procedural bars did not apply because he was not challenging the validity of the judgment of conviction but rather the constitutionality of the laws at issue, jurisdiction, and this court's interpretation of NRS 193.165. Appellant's argument was without merit. Appellant's claims challenge the validity of the judgment of conviction, and thus, the procedural bars do apply in this case.³ NRS 34.720(1); NRS 34.724(1).

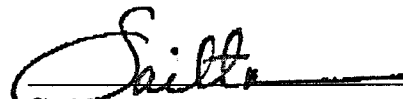
Next, to the extent that appellant claimed that he had good cause because of the 2007 amendments to NRS 193.165, the 2007 amendments did not provide good cause in the instant case. The 2007 amendments to NRS 193.165 do not apply retroactively, but rather apply only to those offenses committed after July 1, 2007. See State v. Dist. Ct. (Pullin), 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Appellant's offense was committed prior to July 1, 2007.

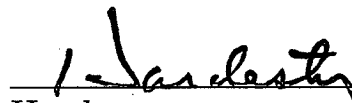
Finally, he appeared to argue that a fundamental miscarriage of justice should overcome application of the procedural bars. Specifically, he argued that his due process rights had been violated because the laws reproduced in the Nevada Revised Statutes did not contain an enacting clause as required by the Nevada Constitution. Nev. Const. art. 4, § 23. He further claimed that this court erroneously interpreted NRS 193.165 to require a consecutive sentence and that the murder and robbery statutes were void for vagueness. Appellant did not demonstrate a fundamental


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

miscarriage of justice as his arguments fell short of demonstrating actual innocence. 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). We therefore conclude that the district court did not err in denying appellant's petition as procedurally barred.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Salta, J.


Hardesty, J.


Parraguirte, J.

cc: Hon. Kenneth C. Cory, District Judge
Roy H. Philson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We further conclude that the district court did not err in denying his request for a writ of mandamus or declaratory judgment. NRS 34.170.