

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT EARL JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55832

FILED

SEP 29 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 appellant's post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Appellant filed his petition on December 4, 2009, more than eight years after this court issued the remittitur from his direct appeal on June 20, 2000.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed three post-conviction petitions for writs of habeas corpus.³

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).

²Jones v. State, Docket No. 33748 (Order Dismissing Appeal, May 25, 2000).

³Jones v. State, Docket No. 47939 (Order of Affirmance, January 29, 2007); Jones v. State, Docket No. 41626 (Order of Affirmance, April 22, 2007); *continued on next page . . .*

NRS 34.810(1)(b)(2); NRS 34.810(2). To the extent appellant's claims were new and different than those raised in his previous petitions, his petition was 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).

In his petition, appellant claimed that he received a flawed jury instruction on the elements of first-degree murder because the jury was given the Kazalyn instruction on premeditation. Kazalyn v. State, 108 Nev. 67, 75, 825 P.2d 578, 583 (1992), receded from by Byford v. State, 116 Nev. 215, 235, 994 P.2d 700, 713-14 (2000). In an attempt to excuse his procedural defects, appellant relied on Polk v. Sandoval, 503 F.3d 903 (9th Cir. 2007) (concluding that Byford applied retroactively), claiming that he could not file his Byford claim until after Polk.

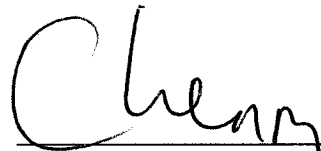
Despite appellant's claims, this court applied Byford to appellant's case on direct appeal, and concluded that while the jury was improperly instructed pursuant to Kazalyn, the evidence presented at trial was sufficient to establish premeditation and deliberation. Jones v. State, Docket No. 33748 (Order Dismissing Appeal, May 25, 2000). The doctrine of law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and precisely focused argument." Hall v State,


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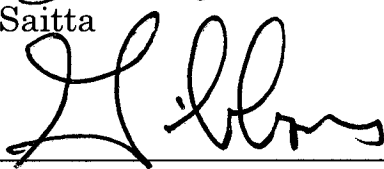
2004); Jones v. State, Docket No. 39039 (Order of Affirmance, December 19, 2002).

91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Thus, appellant failed to establish good cause to excuse his procedural defects. Further, as sufficient evidence existed to establish premeditation and deliberation, appellant failed to demonstrate prejudice. See Byford, 116 Nev. at 233-34, 994 P.2d at 712-13. Appellant also failed to overcome the presumption of prejudice to the State. Therefore, the district court did not err in dismissing appellant's petition as procedurally barred.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jennifer Togliatti, District Judge
Robert Earl Jones
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We further note that even if Polk established good cause for a portion of appellant's delay, appellant's petition was still untimely, as appellant filed the petition more than one year after Polk was issued. See NRS 34.726(1).