

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN M. WILSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55840

**FILED**

SEP 10 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.<sup>1</sup> Eighth Judicial District Court, Clark County; David Wall, Judge.

Appellant filed his petition on January 7, 2010, more than five years after entry of the judgment of conviction on December 9, 2004.<sup>2</sup> Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was also an abuse of the writ as he raised new claims for relief from those litigated in a prior petition.<sup>3</sup> 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(3).

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<sup>1</sup>This 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).

<sup>2</sup>No direct appeal was taken.

<sup>3</sup>Wilson v. State, Docket No. 46863 (Order of Affirmance, July 10, 2006).

Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of laches. NRS 34.800(2).

Appellant did not provide a cogent argument that he had cause for the delay. To the extent that he argued that the procedural bars did not apply because he was challenging the constitutionality of the laws, the jurisdiction of the courts, and this court's interpretation of NRS 193.165, appellant's argument was without merit. Appellant's claims challenged the validity of the judgment of conviction, and thus, the procedural bars did apply in this case.<sup>4</sup> See NRS 34.720(1); NRS 34.724(1).

Next, appellant 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. Appellant did not demonstrate a fundamental miscarriage of justice as his argument fell short of demonstrating actual innocence.<sup>5</sup> Calderon v. Thompson, 523

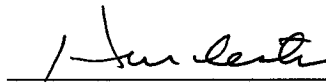
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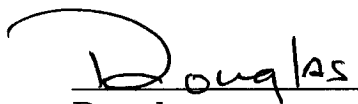
<sup>4</sup>Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.


<sup>5</sup>We 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.

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). Finally, appellant failed to overcome the presumption of prejudice to the State. We therefore conclude that the district court did not err in denying appellant's petition.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. David Wall, District Judge  
Brian M. Wilson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>6</sup>We further conclude that the district court did not err in denying his request for a writ of mandamus or declaratory judgment. NRS 34.170.