

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMMY EARL COLLINS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55842

**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, or alternatively, a petition for a writ of mandamus or request for declaratory judgment.<sup>1</sup> Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant filed his petition on January 6, 2010, almost ten years after issuance of the remittitur on direct appeal on April 25, 2000, and approximately seven years after entry of an amended judgment of conviction on January 31, 2003. Collins v. State, Docket No. 30653 (Order Dismissing Appeal, July 7, 1999). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated a post-conviction petition for a writ of habeas corpus, and the petition was an abuse of the writ as he raised

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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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

claims new and different from those raised in his previous petition.<sup>2</sup> See NRS 34.810(1)(b)(2); 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(1)(b); NRS 34.810(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of laches. NRS 34.800(2).

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, jurisdiction, and this court's interpretation of NRS 193.165. Appellant's argument is without merit. Appellant's claims challenge the validity of the judgment of conviction, and thus, the procedural bars do apply in this case.<sup>3</sup> NRS 34.720(1); NRS 34.724(1).

Next, 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. Appellant did not demonstrate a fundamental miscarriage of justice as his arguments fell short of demonstrating actual innocence. Calderon v. Thompson, 523 U.S. 538,

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<sup>2</sup>Collins v. State, Docket No. 41033 (Order of Affirmance, March 17, 2005).

<sup>3</sup>Appellant's claims did not implicate the jurisdiction of the courts.

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). 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>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Jackie Glass, District Judge  
Sammy Earl Collins  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>4</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.