

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM LEE ENGLAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55844

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.¹ Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Appellant filed his petition on January 4, 2010, almost twenty years after issuance of the remittitur on direct appeal on January 18, 1989. England v. State, Docket No. 18825 (Order Dismissing Appeal, December 27, 1988). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a petition for post-conviction relief, and the 2010 petition was an abuse of the writ as he raised claims new and different from those raised in his previous petition. See NRS 34.810(1)(b)(2); NRS

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).

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 did not attempt to demonstrate good cause. Rather, he argued 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. Appellant did not demonstrate a fundamental miscarriage of justice as his argument 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).

Moreover, as a separate and independent ground to deny relief, we conclude that the claim is patently without merit. The laws by which appellant was convicted were properly enacted and are set forth in the Statutes of Nevada with enacting clauses. 1985 Nev. Stat., ch. 82, § 54, at 247-48 (NRS 200.400) (enacting clause at 220); 1977 Nev. Stat., ch. 598, §§ 2, 3, at 1626-27 (NRS 200.364, NRS 200.366) (enacting clause at 1626); 1983 Nev. Stat., ch. 55, § 4, at 207 (NRS 201.230) (enacting clause at 205). The Nevada Revised Statutes reproduces those laws as classified, codified, and annotated by the Legislative Counsel. NRS 220.120. We

therefore conclude that the district court did not err in denying appellant's petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Jennifer Togliatti, District Judge
William Lee England
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk