

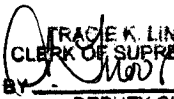
IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN LEE NEWBERG,
Appellant,
vs.
WARDEN, JACK PALMER,
Respondent.

No. 55891

FILED

NOV 08 2010

TRACIE 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.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant filed his petition on August 18, 2009, more than four years after issuance of the remittitur on direct appeal on April 12, 2005. Newberg v. State, Docket No. 41475 (Order of Affirmance, March 17, 2005). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² 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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²Newberg v. State, Docket No. 47808 (Order of Affirmance, April 6, 2007).

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).

To excuse the procedural bars, appellant claimed that he sought to exhaust his claims in order to seek federal court review. Raising claims in an untimely and successive petition for purposes of exhaustion is not good cause. Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994) (holding that good cause must be an impediment external to the defense). Appellant failed to demonstrate that his claims were not reasonably available to be raised in a timely petition. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, the district court did not err in dismissing the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Michelle Leavitt, District Judge
Steven Lee Newberg
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk