

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS LUNDY DOWNING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55892

CURTIS LUNDY DOWNING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56050

FILED

DEC 20 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying a post-conviction petition for a writ of habeas corpus and a post-conviction petition for a writ of habeas corpus, or alternatively, a petition for a writ of mandamus or request for declaratory judgment. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge. Eighth Judicial District Court, Clark County; Michael Villani, Judge. We elect to consolidate these appeals for disposition.¹ See NRAP 3(b).

¹These appeals have 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).

Docket No. 55892

Appellant filed his petition on December 11, 2009, almost 12 years after issuance of the remittitur on direct appeal on June 10, 1997. Downing v. State, Docket No. 27734 (Order Dismissing Appeal, May 22, 1997). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated three post-conviction petitions for a writ of habeas corpus, and the petition was an abuse of the writ as he raised claims new and different from those raised in his previous petitions.² 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 prejudice to the State. NRS 34.800(2).

Appellant claimed 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 and this court's jurisdiction. Appellant's claim was without merit. Appellant's claim challenged the validity of the judgment of conviction, and thus, the procedural bars applied in this case.³ NRS 34.720(1); NRS 34.724(1). Appellant also failed

²Downing v. State, Docket No. 28466 (Order Dismissing Appeal, December 24, 1997); Downing v. State, Docket No. 33167 (Order of Affirmance, October 2, 2000); Downing v. State, Docket No. 42905 (Order of Affirmance, August 23, 2004).

³Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.

to explain the entire length of his delay in raising his claim. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). In addition, appellant failed to overcome the presumption of prejudice to the State. Therefore, the district court did not err in denying this petition as procedurally barred.

Docket No. 56050

Appellant filed his petition on December 15, 2009, more than nine years after issuance of the remittitur on direct appeal on March 28, 2000. Downing v. State, Docket No. 32394 (Order Dismissing Appeal, March 2, 2000). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed two post-conviction petitions for a writ of habeas corpus, and the petition was an abuse of the writ as he raised claims new and different from those raised in his previous petitions.⁴ 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 prejudice to the State. NRS 34.800(2).

Appellant first claimed 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

⁴Downing v. State, Docket No. 37473 (Order of Affirmance, April 11, 2002). No appeal was taken from the district court's denial of appellant's second post-conviction petition for a writ of habeas corpus filed on May 8, 2006.

interpretation of NRS 193.165. Appellant's claim was without merit. Appellant's claim challenged the validity of the judgment of conviction, and thus, the procedural bars applied in this case.⁵ NRS 34.720(1); NRS 34.724(1).

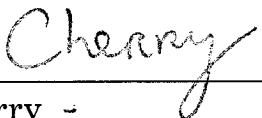
Next, he appeared to argue that a fundamental miscarriage of justice should overcome application of the procedural bars. Specifically, he claimed that his due process rights had been violated because the laws reproduced in the Nevada Revised Statutes did not contain an enacting clause as required by 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.⁶ 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). In addition, appellant failed to overcome the presumption of prejudice to the State. We therefore

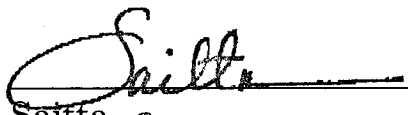
⁵Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.

⁶We 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.

conclude that the district court did not err in denying appellant's petition.⁷
Accordingly, we

ORDER the judgments of the district court AFFIRMED.⁸


_____, J.
Cherry -


_____, J.
Satta


_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Hon. Michael Villani, District Judge
Curtis Lundy Downing
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁷We further conclude that the district court did not err in denying his request for a writ of mandamus or declaratory judgment. NRS 34.170.

⁸We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.