

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY T. LARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55893

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; Doug Smith, Judge.

Appellant filed his petition on April 8, 2010, more than fourteen years after entry of the judgment of conviction on January 6, 1995.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was also an abuse of the writ because he raised new and different claims from those litigated in prior petitions.³ NRS 34.810(2). Appellant's petition was procedurally barred absent a

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).

²No direct appeal was taken.

³Lark v. State, Docket No. 38947 (Order of Affirmance, July 22, 2002); Lark v. State, Docket No. 29295 (Order Granting Rehearing, Reinstating, and Dismissing Appeal, June 15, 1999).

demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

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 is without merit. Appellant's claims challenge the validity of the judgment of conviction, and thus, the procedural bars do apply in this case.⁴ See NRS 34.720(1); NRS 34.724(1).

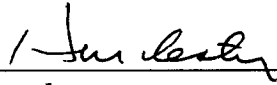
Finally, appellant appeared to argue that a fundamental miscarriage of justice should overcome application of the procedural bars. Specifically, he argued that his due process rights had been violated because the laws reproduced in the Nevada Revised Statutes did not contain an enacting clause as required 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.⁵ 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.

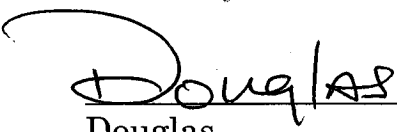
⁴Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.


⁵We 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. Further, we note that appellant's sentence was not enhanced pursuant to NRS 193.165.

Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude that the district court did not err in denying appellant's petition.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Doug Smith, District Judge
Jeffrey T. Lark
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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