

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE JOSEPH SANDOVAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55987

FILED

NOV 01 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 dismissing a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant filed his petition on January 25, 2010, more than two years after issuance of the remittitur on direct appeal on September 4, 2007. Sandoval v. State, Docket No. 48017 (Order Affirming in Part, Reversing in Part and Remanding, August 7, 2007). Thus, appellant's petition was untimely filed. See NRS 34.726(1).² Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus. 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).

²We note that the petition is also untimely from the amended judgment of conviction entered on September 7, 2007. Sullivan v. State, 120 Nev. 537, 540-41, 96 P.3d 761, 763-64 (2004).

34.810(2).³ 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.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

³Appellant filed a post-conviction petition for a writ of habeas corpus in the district court on December 28, 2007. Appellant filed an untimely notice of appeal from the district court's order denying that petition, which this court dismissed for lack of jurisdiction. Sandoval v. State, Docket No. 52298 (Order Dismissing Appeal, September 12, 2008).

cc: Hon. Donald M. Mosley, District Judge
Eighth District Court Clerk
Lawrence Joseph Sandoval
Attorney General/Carson City
Clark County District Attorney