

IN THE SUPREME COURT OF THE STATE OF NEVADA

NORMAN EARL SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55995

FILED

SEP 29 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 appellant's post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on January 6, 2010, approximately 22 years after the district court entered appellant's judgment of conviction and sentence on April 13, 1987. 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.² See NRS 34.810(2). To the extent appellant's claims were new and different than the claims raised in his previous petition,

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).

²See Smith v. State, Docket No. 25360 (Order Dismissing Appeal, August 10, 1994).

appellant's petition constituted an abuse of the writ. See id. Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

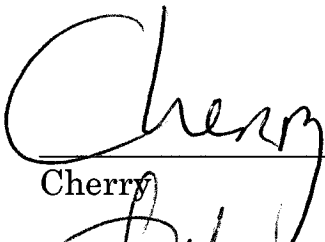
Appellant's attempt to excuse his procedural defects by arguing that the district court lacked subject matter jurisdiction over his original convictions lacked merit. First, appellant claimed that the statutes under which he was charged and convicted were unconstitutional, as they did not contain the enacting clause mandated by Article 4, Section 23 of the Nevada Constitution. While the Nevada Revised Statutes (NRS) "constitute the official codified version of the Statutes of Nevada and may be cited as prima facie evidence of the law," the actual laws of Nevada are contained in the Statutes of Nevada. NRS 220.170(3). Therefore, the sections of the Nevada Revised Statutes under which appellant was convicted were not unconstitutional for failure to include an enacting clause, indicating that the district court did not lack subject matter jurisdiction over appellant.

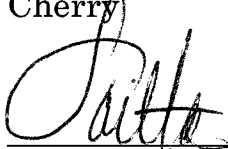
Second, appellant claimed that the district court lacked subject matter jurisdiction to impose the deadly weapon enhancement because NRS 193.165 is unconstitutional. Appellant also claimed that the statutes under which he was convicted were unconstitutionally vague. These arguments fail to demonstrate that the district court lacked subject matter jurisdiction over appellant. See Nev. Const. art. 6, § 6(1) (vesting the district courts with original jurisdiction in "all cases excluded by law from the original jurisdiction of the justices' courts").


Beyond his arguments related to subject matter jurisdiction, appellant failed to demonstrate any other impediment external to the defense that prevented him from filing his claims within the time limits of NRS 34.726(1). See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Appellant's claim that failure to consider his petition would result in a fundamental miscarriage of justice also lacked merit, as appellant failed to make any colorable showing of actual innocence. See 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). Appellant further failed to overcome the presumption of prejudice to the State pursuant to NRS 34.800(2). Thus, the district court did not err in denying the petition as procedurally barred.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Norman Earl Smith
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk