

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELVIN LEE BAILEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56029

FILED

SEP 09 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 Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant filed his petition on December 7, 2009, more than nine and one-half years after issuance of the remittitur on direct appeal on June 2, 1998. Bailey v. State, Docket No. 30949 (Order Dismissing Appeal, May 14, 1998). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition 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(2). Appellant's petition was

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).

²Bailey v. State, Docket No. 36990 (Order of Affirmance, August 10, 2001).

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

Appellant claimed that he had good cause because of newly discovered claims, he was a layman at law, ineffective assistance of trial, appellate, and post-conviction counsel, and a review of the prior post-conviction proceedings reveals a spirit of suppression and racial bias. Appellant failed to demonstrate an impediment external to the defense excused his procedural defects. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Appellant failed to demonstrate that the claims raised in the petition were not reasonably available within the one-year time period for filing a post-conviction petition for a writ of habeas corpus.³ Id. at 252-53, 71 P.3d at 506. Appellant's lack of legal knowledge and training is not good cause. Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Appellant's claims of ineffective assistance of trial and appellate counsel would not be good cause in this case because those claims were procedurally barred themselves. Hathaway, 119 Nev. at 252, 71 P.3d at 506. Because appellant was not entitled to the appointment of post-conviction counsel in the first proceedings, a claim of ineffective assistance of post-conviction counsel would not be good cause. Crump v. Warden, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); McKague v. Warden, 112 Nev. 159, 164, 912 P.2d 255, 258

³Appellant's attempt to characterize a claim as jurisdictional was without merit as appellant failed to demonstrate that the district court was without jurisdiction. Nev. Const. art. 6, §6; NRS 171.010; NRS 171.196(1); NRS 173.025; NRS 173.035.

(1996). Therefore, we conclude that 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. Connie J. Steinheimer, District Judge
Melvin Lee Bailey
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk