

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN GARCIA DIAZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56051

**FILED**

NOV 08 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

Appellant filed his petition on November 5, 2009, almost 8 years after issuance of the remittitur on direct appeal on December 13, 2001. Diaz v. State, Docket No. 36754 (Order of Affirmance, November 16, 2001). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated a post-conviction petition for a writ of habeas corpus. See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally

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<sup>1</sup>This 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).

barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Good cause must be an impediment external to the defense. Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

In an attempt to demonstrate good cause, appellant first claimed that a successive petition was necessary to exhaust state remedies. Filing a late, successive petition for exhaustion purposes is not an impediment external to the defense. Id. The claims raised were reasonably available to be raised in a timely petition. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).

Next, appellant claimed that he had good cause because the district court failed to appoint post-conviction counsel in the first proceedings. Appellant failed to demonstrate an impediment external to the defense excused his late, successive petition. The instant petition was filed more than five years after this court affirmed the decision of the district court to deny his proper person post-conviction petition for a writ of habeas corpus.<sup>2</sup> Further, appellant failed to demonstrate that the district court abused its discretion in failing to appoint post-conviction counsel in the first proceedings. See NRS 34.750(1). Therefore, we

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<sup>2</sup>Diaz v. State, Docket No. 41469 (Order of Affirmance, August 24, 2004).

conclude that the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Abbi Silver, District Judge  
Juan Garcia Diaz  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>We 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.