

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD LEE SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56069

FILED

SEP 29 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingerson*
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, or alternatively, a petition for a writ of mandamus or request for declaratory judgment.¹ Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Appellant filed his petition on January 21, 2010, approximately six years after issuance of the remittitur on direct appeal on December 16, 2003. Smith v. State, Docket No. 39492 (Order of Affirmance, November 21, 2003). 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, and the petition was an abuse of the writ as he raised

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).

claims new and different from those raised in his previous petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). 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). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of laches. NRS 34.800(2).

Appellant first argued that the procedural bars did not apply because he was not challenging the validity of the judgment of conviction but rather the constitutionality of the laws at issue, jurisdiction, and this court's interpretation of NRS 193.165. Appellant's argument was without merit. Appellant's claims challenge the validity of the judgment of conviction, and thus, the procedural bars do apply in this case.³ NRS 34.720(1); NRS 34.724(1).

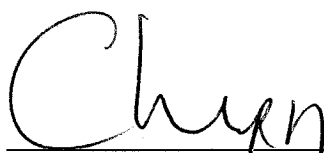
Next, to the extent that appellant claimed that he had good cause because of the 2007 amendments to NRS 193.165, the 2007 amendments did not provide good cause in the instant case. The 2007 amendments to NRS 193.165 do not apply retroactively, but rather apply only to those offenses committed after July 1, 2007. See State v. Dist. Ct. (Pullin), 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Appellant's offense was committed prior to July 1, 2007.


²Smith v. State, Docket No. 44497 (Order of Affirmance, April 4, 2005).


³Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.

Finally, he 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 and that the murder statute was void for vagueness for not referring to the deadly weapon enhancement. Appellant did not demonstrate a fundamental miscarriage of justice as his arguments fell short of demonstrating actual innocence. 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. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Appellant failed to overcome the presumption of prejudice to the State. We therefore conclude that the district court did not err in denying appellant's petition.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

⁴We further conclude that the district court did not err in denying his request for a writ of mandamus or declaratory judgment. NRS 34.170.

cc: Hon. Jennifer Togliatti, District Judge
Eighth District Court Clerk
Edward Lee Smith
Attorney General/Carson City
Clark County District Attorney