

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMION LAMONT JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56072

FILED

FEB 18 2011

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant filed his petition on January 7, 2010, more than thirteen years after the district court entered appellant's judgment of conviction and sentence.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition constituted an abuse of the writ to the extent he raised claims new and different from those raised in a previously filed post-conviction petition.³ See NRS 34.810(2). Therefore, appellant's petition was procedurally barred absent a

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).

²No direct appeal was taken.

³Jackson v. State, Docket No. 35948 (Order of Affirmance, December 5, 2001).

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).

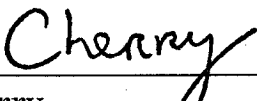
Appellant's attempt to excuse his procedural defects by arguing that the district court lacked subject matter jurisdiction over his original conviction lacked merit. First, appellant claimed that the statutes under which he was charged and convicted were unconstitutional, as they did not contain the enacting clause mandated by Article 4, Section 23 of the Nevada Constitution. While the Nevada Revised Statutes (NRS) "constitute the official codified version of 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 for this reason.

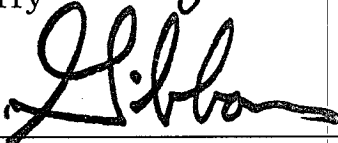
Second, appellant claimed that the district court lacked subject matter jurisdiction to impose the deadly weapon enhancement because NRS 193.165 is unconstitutional. Appellant also claimed that the statutes under which he was convicted were unconstitutionally vague. These arguments fail to demonstrate 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). To the extent appellant argued that failure to consider his claims would result in a fundamental miscarriage of justice, appellant failed to present any new evidence demonstrating that he was actually innocent. See Calderon v. Thompson, 523 U.S. 538, 559 (1998); 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 further failed to overcome the presumption of prejudice to the State. 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.
Gibbons


_____, J.
Pickering

cc: Hon. Jackie Glass, District Judge
Damion Lamont Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk