

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS LOBATO ROMERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56119

FILED

DEC 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 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 Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant filed his petition on January 13, 2010, more than seven years after issuance of the remittitur on direct appeal on December 3, 2002. Romero, Sr. v. State, Docket No. 39638 (Order of Affirmance, November 6, 2002). 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 claims new and different from those raised in his previous petition.² See NRS

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).

²Romero v. State, Docket No. 52420 (Order of Affirmance, July 29, 2009).

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).³

Appellant first claimed 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, jurisdiction, and this court's interpretation of NRS 193.165. Appellant's claim was without merit. Appellant's claim challenged the validity of the judgment of conviction, and thus, the procedural bars applied in this case.⁴ NRS 34.720(1); NRS 34.724(1).

Next, he appeared to argue that a fundamental miscarriage of justice should overcome application of the procedural bars. Specifically, he claimed 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. Appellant did not demonstrate a fundamental miscarriage of justice as his arguments fell short of demonstrating actual innocence.⁵ Calderon v. Thompson, 523 U.S. 538,

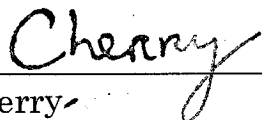
³We conclude that the district court did not abuse its discretion in denying appellant's motion for the appointment of post-conviction counsel. NRS 34.750.


⁴Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.


⁵We note that the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes reproduce those laws as classified, codified, and annotated by the Legislative Counsel. NRS 220.120.

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). In addition, 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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Carlos Lobato Romero
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

⁶We further conclude that the district court did not err in denying his request for a writ of mandamus or declaratory judgment. NRS 34.170.