

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERMANDI TYLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56257

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 dismissing 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; David Wall, Judge.

Appellant filed his petition on March 2, 2010, more than three years after the judgment of conviction was filed on December 4, 2006.² Thus, appellant's petition was untimely filed. NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. Id.

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.

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, jurisdiction, and this court's interpretation of NRS 193.165. Appellant's argument is 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, 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. Appellant did not demonstrate a fundamental miscarriage of justice as his arguments fell short of demonstrating actual innocence.⁴ 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

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

⁴We 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.

Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude that the district court did not err in dismissing appellant's petition.⁵

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. David Wall, District Judge
Eighth District Court Clerk
Germandi Tyler
Attorney General/Carson City
Clark County District Attorney

⁵We further conclude that the district court did not err in denying his request for a writ of mandamus or declaratory judgment. NRS 34.170.