

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM ELDRIDGE CALDWELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56471

**FILED**

**MAR 18 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY [Signature]  
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; Jennifer Togliatti, Judge.

Appellant filed his petition on February 9, 2010, more than 10 years after entry of the judgment of conviction on March 12, 1999. Thus, appellant's petition was untimely filed.<sup>2</sup> See NRS 34.726(1). Moreover, appellant's petition constituted an abuse of the writ as he raised claims

---

<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).

<sup>2</sup>Appellant's direct appeal was dismissed for lack of jurisdiction because the notice of appeal was untimely filed. Caldwell v. State, Docket No. 35815 (Order Dismissing Appeal, April 12, 2000). Thus, the proper date to measure timeliness is the entry of the judgment of conviction. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

new and different from those raised in his previous petitions.<sup>3</sup> See 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(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

Appellant first claimed that his trial counsel's failure to file a direct appeal constituted good cause. Appellant failed to demonstrate that this would provide good cause as he did not allege that he believed an appeal had been filed and failed to demonstrate that he filed his petition within a reasonable time after learning that no appeal had been filed. Hathaway v. State, 119 Nev. 248, 254-55, 71 P.3d 503, 507-08 (2003).

Second, appellant claimed that he had good cause to excuse the delay because the State withheld exculpatory evidence. Appellant did not indicate what evidence the State allegedly withheld, and bare and naked assertions are insufficient to demonstrate that relief was warranted. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Third, appellant claimed that he had good cause because the district court did not have jurisdiction to convict him as the statute of limitations barred the prosecution. This claim was without merit as the victim was under 21 when the indictment was found and, thus, appellant

---


<sup>3</sup>Caldwell v. State, Docket No. 38068 (Order of Affirmance, May 15, 2002); Caldwell v. State, Docket No. 43054 (Order of Affirmance, November 14, 2004).

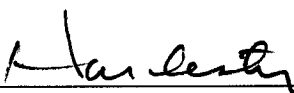
was charged within the statute of limitations for a charge of sexual assault on a minor under 14. See NRS 171.095(1)(b)(1).

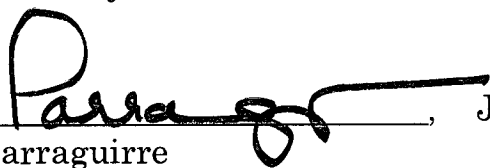
Fourth, appellant claimed that he had good cause to excuse the delay because he lost his legal papers when he was transferred to a different detention facility. As appellant asserted that he lost the documents in 2008, any claim arising from those documents would not explain the entire 10-year delay. Hathaway, 119 Nev. at 252-53, 71 P.3d at 506.

Finally, appellant failed to overcome the presumption of prejudice to the State. Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

---

<sup>4</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.

cc: Hon. Jennifer Togliatti, District Judge  
William Eldridge Caldwell  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk