

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEREK A. COSTANTINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56515

FILED

JAN 13 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 appellant's post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant filed his petition on February 26, 2010, nearly 13 years after issuance of the remittitur on direct appeal on March 18, 1997. Costantino v. State, Docket No. 28854 (Order Dismissing Appeal, February 26, 1997). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was also successive because one claim had been raised in an earlier petition and decided on the merits, and the petition constituted an abuse of the writ as several other claims were new

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).


and different from those raised in his previous petitions.² NRS 34.810(2). Appellant's petition was thus procedurally barred absent a demonstration of good cause and actual prejudice. NRS 34.726(1); 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).

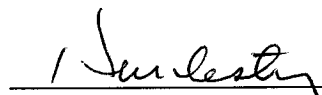
Appellant argued that he had good cause to excuse his procedural bars because a January 4, 2008, order filed in ADKT No. 411 referenced the public defenders' large caseloads and ordered them to advise their county commissioners when unable to accept additional appointments due to ethical considerations stemming from those caseloads. This was essentially a claim of ineffective assistance of counsel, which, to constitute good cause, must itself not be procedurally barred. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). However, the ineffective assistance of counsel claim was procedurally barred as appellant's remittitur from his direct appeal was issued nearly thirteen years prior to the filing of the instant petition. See NRS 34.726(1). Accordingly, appellant failed to demonstrate good cause. Moreover appellant failed to overcome the presumption of prejudice to the State pursuant to NRS 34.800(2).

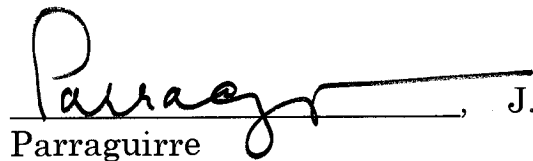
²Costantino v. State, Docket Nos. 30734, 31276 (Order Dismissing Appeals, December 10, 1999) (holding, in part, that appellant received adequate notice of the evidentiary hearing); Costantino v. State, Docket No. 42609 (Order of Affirmance, August 23, 2004); Costantino v. State, Docket No. 47986 (Order of Affirmance, January 8, 2007); Costantino v. State, Docket Nos. 51868, 52048 (Order of Affirmance, January 8, 2009); Costantino v. State, Docket Nos. 52565, 52566, 52596 (Order of Affirmance, May 1, 2009).

Appellant has filed numerous documents in the district court and this court raising substantially similar claims, as well as claims that are not warranted by existing law nor by a reasonable argument for a change in the law. In affirming the district court's order denying a post-conviction petition for a writ of habeas corpus in Docket Nos. 52565, 52566, and 52596, this court cautioned appellant that a prisoner could forfeit all deductions of time he has earned if the court finds that he has filed a document in a civil action for an "improper purpose." A post-conviction petition for a writ of habeas corpus is a civil action. NRS 209.451(5). Appellant's continuous stream of filings is an abuse of judicial resources, and the inclusion of these repetitive and unwarranted claims in the instant petition constitutes an improper purpose. Therefore, we refer this matter to the Director of the Department of Corrections to determine what forfeiture, if any, is warranted. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REFER this matter to the Director of the Department of Corrections.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Derek A. Costantino
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk
Director, Department of Corrections