

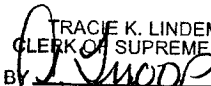
IN THE SUPREME COURT OF THE STATE OF NEVADA

LADONTAY R. DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56958

FILED

MAR 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  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.¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant filed his petition on July 8, 2010, more than seven years after entry of the judgment of conviction on March 19, 2003, and nearly seven years after entry of the amended judgment of conviction on November 17, 2003. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause and undue prejudice. See NRS 34.726(1). Moreover, because the State specifically pleaded laches, appellant was

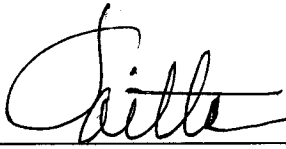
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).


required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).


In an attempt to overcome the procedural bars, appellant claimed he only learned that his sentence had been modified five years after the amended judgment of conviction had been filed. Appellant also claimed that he would have filed this petition sooner but he was untrained in the law. Appellant failed to demonstrate good cause to overcome the procedural bars. First, appellant did not file a timely petition after the amended judgment of conviction was filed. See Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004) (suggesting that the entry of an amended judgment of conviction may provide good cause “if the claims presented in a petition filed within one year of the entry of the amended judgment challenge the proceedings leading to a substantive amendment to the judgment and could not have been raised in prior proceedings”). Appellant, by his own admission, knew in October of 2008, that his sentence had been modified. Appellant waited until July 8, 2010, to file the instant petition. Therefore, even assuming that appellant did not receive a copy of the amended judgment of conviction, appellant failed to demonstrate good cause for the entire length of delay. Second, the changes made in the amended judgment of conviction benefitted appellant because it halved the amount of the prison time he was required to serve and corrected the judgment of conviction to conform to the terms of the plea agreement. Third, appellant’s ability to comprehend the law is not an impediment external to the defense. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Finally, appellant failed to overcome the

rebuttable presumption of laches. Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Ladontay R. Davis
Attorney General/Carson City
Clark County District Attorney
Eighth Judicial Court Clerk

²We 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.