

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS RANDALL BARKER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57011

**FILED**

FEB 09 2011

TRACE 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 dismissing a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellant filed his petition on February 2, 2010, more than seven years after entry of the judgment of conviction on January 16, 2003. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See id. Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

---

<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).

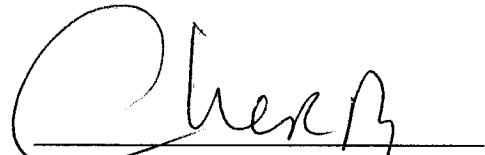
Appellant argued that he had cause to excuse the delay because he was mentally incompetent due to a bipolar disorder. Appellant attached copies of 1995 and 2000 documents showing his mental health problems and asserted that it was only in 2010 that he regained competency due to adequate mental health care at his new facility. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). The documents from 1995 and 2000 are not newly discovered as they pre-date his judgment of conviction in this case, and thus, any claims relating to his competence in the trial proceedings was reasonably available to be raised in a timely petition. Id. at 252-53, 71 P.3d at 506. Further, the documents do not demonstrate that he was mentally incompetent during the time period in question.<sup>2</sup> To the extent that appellant claimed that a fundamental miscarriage of justice overcame his procedural defects because he was either legally insane when he committed the crime or incompetent when he entered the guilty plea, appellant did not demonstrate actual innocence because he failed to show that “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.” Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001);


---

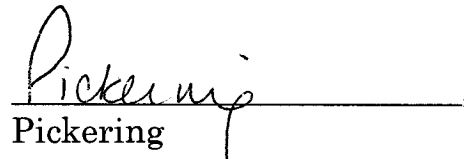
<sup>2</sup>In particular, we note that the 2000 document contains a conclusion that appellant was competent to assist in the trial proceedings.

Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Thus, appellant failed to overcome the presumption of prejudice to the State pursuant to NRS 34.800(2). We therefore conclude that the district court did not err in dismissing appellant's petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. David B. Barker, District Judge  
Curtis Randall Barker  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk