

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL BENNET NELSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57118

FILED

MAY 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Angerson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant filed his petition on July 26, 2010, more than six years after entry of the judgment of conviction on February 26, 2004. 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.* 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 petition was timely because it was filed within one year from the remittitur issued in an appeal from the denial of a post-conviction motion to withdraw a guilty plea. Appellant


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).

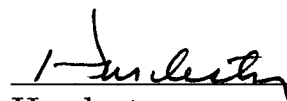
was mistaken. A post-conviction petition for a writ of habeas corpus is timely when it is filed within one year from entry of the judgment of conviction or one year from the issuance of the remittitur in a timely direct appeal. NRS 34.726(1); Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

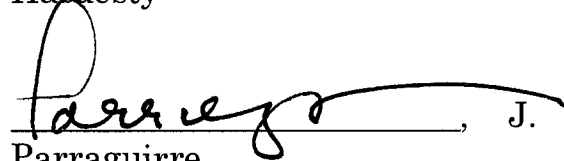
Next, appellant claimed that he had good cause due to ineffective assistance of counsel and alleged fraud relating to the plea agreement. These claims were reasonably available to be raised in a timely post-conviction petition for a writ of habeas corpus, and thus, they did not provide good cause for the delay in filing his petition. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Finally, regarding the State's pleading of laches, appellant failed to overcome the presumption of prejudice. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Jackie Glass, District Judge
Michael Bennet Nelson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk