

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEMARIAN CLEMONS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57301

**FILED**

**JUL 15 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
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; Valorie Vega, Judge.

Appellant filed his petition on September 9, 2010, 13 months after the filing of his judgment of conviction on August 7, 2009. Appellant's petition was therefore untimely filed.<sup>2</sup> See NRS 34.726(1). Appellant's petition was also successive and an abuse of the writ.<sup>3</sup> NRS

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<sup>1</sup>Appellant's notice of appeal also references the denial of a "motion to compel and continue hearing and reply date." The district court orally granted that motion, and appellant is therefore not an aggrieved party and has failed to designate an appealable order.

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>No direct appeal was taken.

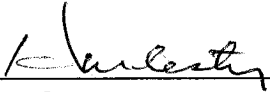
<sup>3</sup>Clemons v. State, Docket Nos. 55638, 56077 (Order of Affirmance, September 10, 2010).

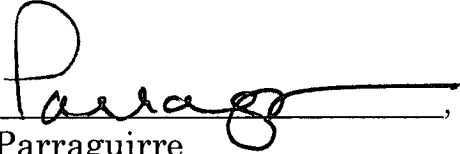
34.810(2). Appellant's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Appellant argued that he had good cause to excuse the procedural bars because he needed to federalize his claims. Filing a late, successive, abusive petition to federalize claims was not an impediment external to the defense. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). The claims raised were reasonably available to be raised in a timely first petition. See id. at 252-53, 71 P.3d at 506. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Valorie Vega, District Judge  
Demarian Clemons  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk