

IN THE SUPREME COURT OF THE STATE OF NEVADA

CORBETT R. JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57346

FILED

JUN 08 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.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant filed his petition on July 8, 2010, over 16 years after issuance of the remittitur on direct appeal on June 14, 1994. Jones v. State, Docket Nos. 24055, 24868 (Order Dismissing Appeal, May 24, 1994). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different

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).

from those raised in his previous petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice to the State. NRS 34.800(2).


To excuse the procedural bars, appellant claimed a communication breakdown with a former attorney caused the delay in raising the claims contained in the instant petition. This did not demonstrate good cause because it did not explain the entire delay and appellant failed to demonstrate that he could not have raised the underlying claims in a timely petition. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Further, appellant failed to overcome the presumption of prejudice against the State.

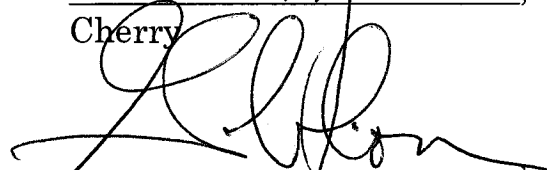
Next, appellant claimed that failure to review his claims would result in a fundamental miscarriage of justice because he did not receive a fair trial. Appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted 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,

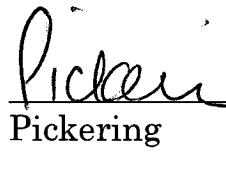
²Shrubs v. State, Docket No. 29922 (Order Dismissing Appeal, May 10, 2000). Appellant is also known as Terry Shrubs and he filed the prior petition under that alias.

34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude that the district court did not err in denying appellant's petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Michael Villani, District Judge
Corbett R. Jones
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk