

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT CHARLES JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57463

FILED

JUN 08 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anger*
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; Jack B. Ames, Stefany Miley, Judges.

Appellant filed his petition on August 10, 2010, raising claims challenging the guilt phase of his trial as well as the amended judgment of conviction, approximately twenty-five years after issuance of the remittitur on direct appeal on November 5, 1985,² and twenty-three years after entry of the amended judgment of conviction on April 10, 1987. Thus, appellant's petition was untimely filed.³ See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously

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).

²Jones v. State, 101 Nev. 573, 707 P.2d 1128 (1985).

³Appellant's petition was also filed more than seventeen years after the effective date of NRS 34.726(1).

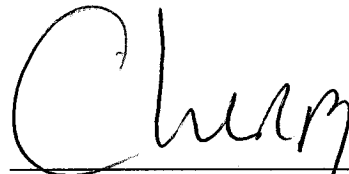
litigated a petition for post-conviction relief and several post-conviction matters, including petitions for a writ of habeas corpus and a motion to withdraw guilty plea, and the instant petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.⁴ 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. NRS 34.800(2).

Appellant appeared to argue that he had good cause to excuse the procedural defects because he had only a third-grade-reading level and his trial counsel was ineffective in regards to his stipulation to receive a sentence of life without the possibility of parole. Appellant's educational level would not provide good cause for the procedural defects in the instant case as it is not an impediment external to the defense. Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). A claim of ineffective assistance of counsel in the sentencing proceedings in 1987 would not provide good cause for this petition as the claims raised in the instant petition were reasonably available to be raised in a timely petition from the 1987 proceedings. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506-07 (2003). To the extent that appellant claimed that he was denied a transcript of the hearing in 1987, appellant failed to demonstrate that he could not have raised claims relating to the 1987 proceedings in a


⁴Jones v. State, Docket No. 55603 (Order of Affirmance, September 29, 2010); Jones v. State, Docket Nos. 37388, 37448 (Order of Affirmance, November 21, 2001). Appellant did not appeal the denial of his petition for post-conviction relief.

timely petition.⁵ To the extent that appellant claimed that he was actually innocent, 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); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Appellant failed to overcome the presumption of prejudice to the State. We therefore conclude that the district court did not err in denying appellant's petition as procedurally barred. Accordingly, we


ORDER the judgment of the district court AFFIRMED.⁶


_____, J.

Cherry


_____, J.

Gibbons


_____, J.

Pickering

⁵Notably, he failed to identify the significance of this transcript in this proceeding and failed to demonstrate that he sought the transcript in a timely fashion.

⁶We 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.

cc: Chief Judge, Eighth Judicial District Court
Hon. Jack B. Ames, Senior Judge
Robert Charles Jones
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk