

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY H. WILCOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57752

FILED

JUN 08 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Ingersoll
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; Donald M. Mosley, Judge.

Appellant filed his petition on September 30, 2010, more than 30 years after this court's June 30, 1980, issuance of the remittitur from his direct appeal.² See Whitmore v. State, Docket No. 12105 (Order Dismissing Appeal, May 22, 1980).³ Appellant's petition was therefore untimely filed. See NRS 34.726(1). Appellant's petition was also

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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

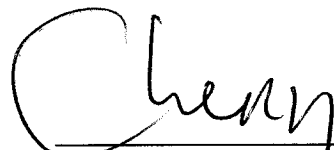
²Appellant's petition was also filed more than 17 years after the effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 33, at 92.

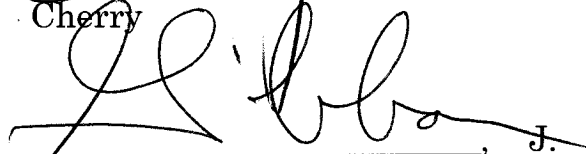
³Duane E. Whitmore was appellant's codefendant.

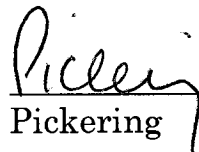
successive and an abuse of the writ.⁴ NRS 34.810(2). Appellant's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Appellant argued that he had good cause to excuse the procedural bars because NRS 176.0918 only became applicable to him in 2009. Appellant failed to demonstrate that the application of the bars would result in prejudice. Appellant's sole claim—a request for genetic marker analysis—was outside the scope of claims permissible in a post-conviction petition for writ of habeas corpus challenging a judgment of conviction based on a guilty plea. NRS 34.810(1)(a). Rather, appellant must submit his request on the form designated by the Department of Corrections. NRS 176.0918(2); NDOC AR 571. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

⁴Appellant did not appeal from the district court's denial of his April 12, 1996, post-conviction petition for a writ of habeas corpus.

cc: Hon. Donald M. Mosley, District Judge
Roy H. Wilcox
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk