

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZACHARY BLAKE SIMMONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57929

FILED

JUL 13 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Lindeman*
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; Valerie Adair, Judge.

Appellant filed his petition on July 26, 2010, more than three years after issuance of the remittitur on direct appeal on February 6, 2007. Simmons v. State, Docket No. 47027 (Order of Affirmance, January 9, 2007). 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.² See NRS 34.810(1)(b)(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).

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).

²Simmons v. State, Docket No. 51667 (Order of Affirmance, October 13, 2008).

Appellant claimed that the petition was timely because he had one year from the date that this court filed the remittitur "receipt" from the district court in his post-conviction appeal in Docket No. 51667. Appellant was mistaken. The one-year time period for filing a post-conviction petition for a writ of habeas corpus began with the issuance of the remittitur in his direct appeal. NRS 34.726(1). To the extent that appellant claimed that his first petition was mistakenly denied as procedurally time barred, this argument would not provide good cause for the filing of the instant petition as it does not explain the entire length of his delay. Moreover, the argument was without merit as this court measures the time for filing a timely petition by the date this court issues the remittitur from the direct appeal, not the date the remittitur is received by the district court and returned to this court. Gonzales v. State, 118 Nev. 590, 593, 53 P.3d 901, 902 (2002).

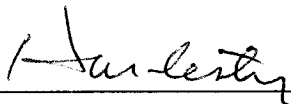
Next, appellant claimed that official interference excused his delay. However, aside from his argument relating to the remittitur in Docket No. 51667, appellant failed to set forth any facts regarding official interference. Therefore, we conclude that the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



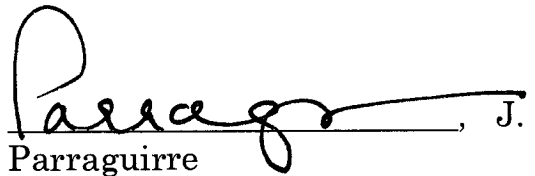
Saitta

J.



Hardesty

J.



Parraguirre

J.

cc: Hon. Valerie Adair, District Judge
Zachary Blake Simmons
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk