

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROSS ERIC BARTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57967

**FILED**

JUL 15 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on November 3, 2010, nearly 14 years after issuance of the remittitur on direct appeal on January 17, 1997. Barton v. State, Docket No. 27076 (Order Dismissing Appeal, December 20, 1996). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed three post-conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally

---

<sup>1</sup>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>Barton v. State, 117 Nev. 686, 30 P.3d 1103 (2001); Barton v. State, Docket No. 47558 (Order of Affirmance, October 13, 2006); Barton v. State, Docket No. 53122 (Order of Affirmance, February 4, 2010).

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).

In attempt to overcome the procedural bars, appellant claimed that prison officials have discarded several of his legal documents over the years. Appellant failed to demonstrate good cause because he failed to allege specific facts that these legal documents were necessary to present his claims in a timely petition. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Further, because the State pleaded laches, this claim would not overcome the presumption of prejudice to the State. Therefore, the district court did not err in denying this claim.

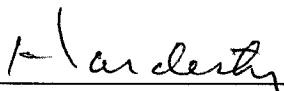
Appellant also claimed that he was actually innocent. Appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup 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). We therefore conclude that the district court did not err in denying appellant's petition as procedurally barred and barred by laches, and we

ORDER the judgment of the district court AFFIRMED.



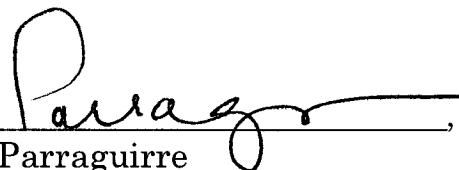
Saitta

J.



Hardesty

J.



Parraguirre

J.

cc: Hon. Elissa F. Cadish, District Judge  
Ross Eric Barton  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk