

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57968

**FILED**

**JUL 15 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.<sup>1</sup> Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant filed his petition on April 28, 2010, more than nine years after this court's September 19, 2000, issuance of the remittitur from his direct appeal. See Peck v. State, 116 Nev. 840, 7 P.3d 470 (2000). Appellant's petition was therefore untimely filed. See NRS 34.726(1). Appellant's petition was also successive and an abuse of the writ.<sup>2</sup> 34.810(1)(b)(2); 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(1)(b); NRS 34.810(3).


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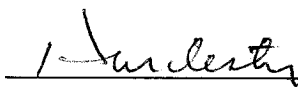
<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

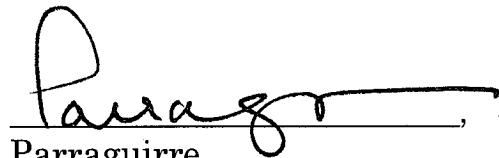
<sup>2</sup>See Peck v. State, Docket No. 42672 (Order of Affirmance, July 11, 2005).

Appellant argued that this court's decision in Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006), provided good cause to excuse his procedural bars because Rosas overruled Peck regarding when a defendant is entitled to a jury instruction on a lesser-included offense. Appellant filed his petition more than three years after this court issued its decision in Rosas. Thus, even if Rosas established good cause to excuse the procedural bars, appellant failed to establish good cause for the entire length of his delay. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Appellant failed to demonstrate a fundamental miscarriage of justice to overcome these procedural bars because he did not present any new evidence. See 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. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

<sup>3</sup>We 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: Hon. Brent T. Adams, District Judge  
Frank Milford Peck  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk