

IN THE SUPREME COURT OF THE STATE OF NEVADA

CESAR VICTOR VALENZUELA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57979

FILED

SEP 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anderson*
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, or alternatively, a petition for a writ of mandamus or request for declaratory judgment.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant filed his petition on July 23, 2010, more than 11 years after the judgment of conviction was filed on March 1, 1999.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See id. Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice to the State. NRS 34.800(2).

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).

²No direct appeal was taken.

Appellant claimed that the procedural bars did not apply because he was not challenging the validity of the judgment of conviction but rather the constitutionality of the laws, jurisdiction, and this court's interpretation of NRS 193.165. Appellant's claim was without merit. Appellant's claims challenged the validity of the judgment of conviction, and thus, the procedural bars apply in this case.³ NRS 34.720(1); NRS 34.724(1). In addition, appellant failed to overcome the presumption of prejudice to the State.

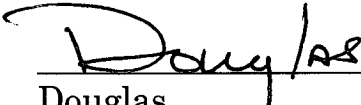
Next, appellant appeared to argue that a fundamental miscarriage of justice should overcome application of the procedural bars. Specifically, he argued that his due process rights had been violated because the laws reproduced in the Nevada Revised Statutes did not contain an enacting clause as required by the Nevada Constitution. Nev. Const. art. 4, § 23. He further claimed that this court erroneously interpreted NRS 193.165 to require a consecutive sentence. Appellant did not demonstrate a fundamental miscarriage of justice 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."⁴ 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);

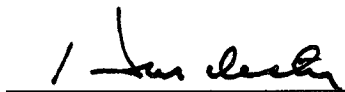
³Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.

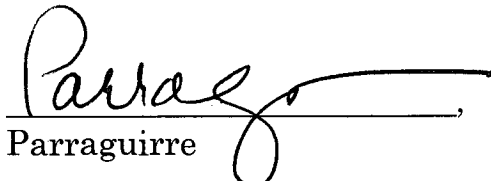
⁴We note that the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes reproduce those laws as classified, codified, and annotated by the Legislative Counsel. NRS 220.120.

Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude that the district court did not err in dismissing appellant's petitions.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Douglas W. Herndon, District Judge
Cesar Victor Valenzuela
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁵We further conclude that the district court did not err in denying the request for a writ of mandamus or declaratory judgment. NRS 34.170.