

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57980

FILED

SEP 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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, a motion to appoint counsel, and a motion for an evidentiary hearing.¹ Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant filed his petition on September 3, 2010, more than 14 years after entry of the judgment of conviction on August 14, 1996.² 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, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.³ See NRS 34.810(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.

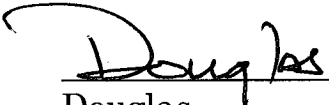
³Lewis v. State, Docket No. 53779 (Order of Affirmance, October 28, 2009).

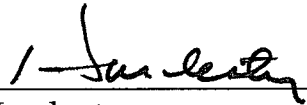
Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice to the State. NRS 34.800(2).

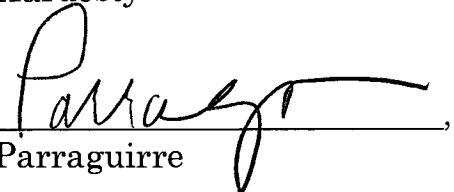
Appellant claimed he had good cause to overcome the procedural bars because he was illiterate and prescribed psychotropic medication. These reasons did not demonstrate good cause for the filing of an untimely and successive post-conviction petition. See Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Moreover, appellant failed to overcome the presumption of prejudice to the State. Therefore, the district court did not err in denying the petition as procedurally barred.

In addition, we conclude that the district court did not err in declining to appoint post-conviction counsel or to conduct an evidentiary hearing. See NRS 34.750; NRS 34.770. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Gary Lynn Lewis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk