

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARLOS MCGILLS MOORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58113

**FILED**

JUL 13 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *A. Medina*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant filed his petition on December 17, 2010, more than one year after issuance of the remittitur on direct appeal on March 24, 2009. Moore v. State, Docket No. 49246 (Order of Affirmance, February 27, 2009). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated two post-conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ to the extent that he raised claims new and different from those raised in his previous petitions.<sup>2</sup> See

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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).

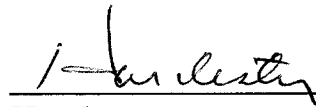
<sup>2</sup>Appellant did not appeal the decisions to deny his prior two petitions.

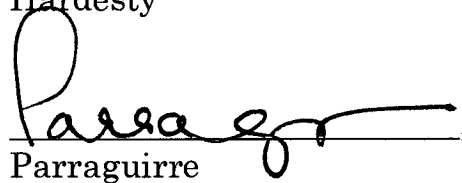
NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Good cause must be an impediment external to the defense. Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

In an attempt to demonstrate good cause, appellant first claimed that a successive petition was necessary to exhaust state remedies. Filing a late, successive petition for exhaustion purposes is not an impediment external to the defense. Id. The claim raised was reasonably available to be raised in a timely petition. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Accordingly, we

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

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

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

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

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<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. Michael Villani, District Judge  
Marlos McGills Moore  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk