

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN SAMUEL BRAUNSTEIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58136

FILED

SEP 14 2011

TRAGIE 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.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant filed his petition on December 16, 2010, more than eight years after the issuance of the remittitur on direct appeal on March 12, 2002. Braunstein v. State, 118 Nev. 68, 40 P.3d 413 (2002). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed several post-conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ to the extent he raised claims new and different from those raised in his previous petitions.² See NRS 34.810(1)(b)(2); NRS

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).

²See Braunstein v. State, Docket No. 57332 (Order of Affirmance, June 8, 2011); Braunstein v. State, Docket No. 46609 (Order of Affirmance, December 5, 2006).

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). Moreover, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. NRS 34.800(2).

In an attempt to overcome the procedural bars, appellant first claimed that he had good cause based on an amended judgment of conviction entered on August 12, 2010. Specifically, appellant argued that the amended judgment of conviction amounted to a new sentencing hearing, and that he was deprived of his right to be present and to the assistance of counsel. He also argued that this new judgment of conviction provided good cause to raise multiple substantive claims challenging the original judgment of conviction and sentence. This court previously considered, and rejected, each of these arguments in Braunstein v. State, Docket No. 57332 (Order of Affirmance, June 8, 2011). Accordingly, these claims are barred by the doctrine of law of the case, which "cannot be avoided by a more detailed and precisely focused argument." Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Beyond his claims related to the amended judgment of conviction, appellant failed to demonstrate any impediment external to the defense sufficient to establish good cause for his delay in filing his petition.³ See Hathaway v.

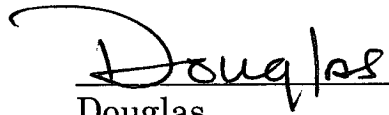
³To the extent appellant claimed that the amended judgment of conviction was flawed due to the district court's failure to award an additional 3,756 days of credit for the time elapsed between the original and amended judgments of conviction, this claim lacks merit, as the amended judgment of conviction clearly amends the original sentence rendered on March 14, 2000.

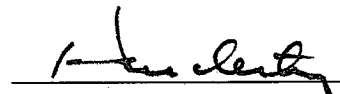
State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, we conclude that the district court did not err in denying appellant's petition as procedurally barred.

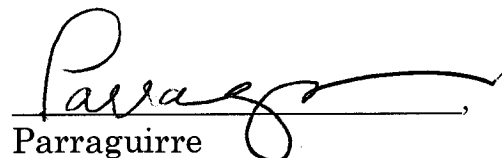
Second, appellant's attempt to overcome his procedural defects by characterizing his petition as a "First Amendment Petition" also lacked merit, as appellant failed to demonstrate any unconstitutional prior restraint of his First Amendment rights. See NRS 34.185.

Finally, to the extent appellant claimed that the procedural bars should be excused because he was actually innocent, appellant failed to make any colorable showing of actual innocence demonstrating 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). In addition, appellant failed to overcome the presumption of prejudice to the State pursuant to NRS 34.800(2). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Michael Villani, District Judge
Steven Samuel Braunstein
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk