

IN THE SUPREME COURT OF THE STATE OF NEVADA

AYRICK TALBO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58266

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 document labeled “petition, motion for writ of habeas corpus ad subjiciendum.”¹ Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

Appellant filed his petition on October 27, 2010, more than six years after entry of the judgment of conviction on June 10, 2004. 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. NRS 34.800(2).

First, appellant appeared to claim that the procedural bars did not apply because he was filing his petition pursuant to NRS 34.500. Because appellant challenged the validity of his judgment of conviction,

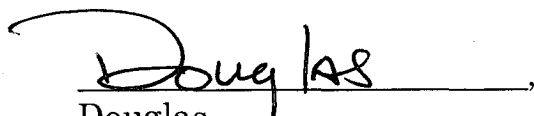
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

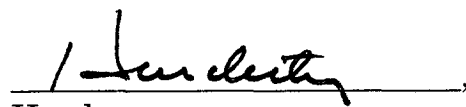
we conclude that the district court properly construed appellant's petition as a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b). Thus, the procedural rules relating to a post-conviction petition for a writ of habeas corpus applied to this petition. NRS 34.720.

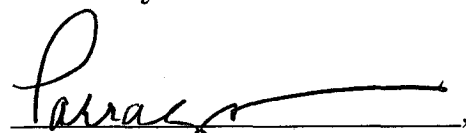
Next, appellant appeared to claim that the time limit set forth in NRS 34.726(1) did not apply because he was challenging the jurisdiction of the courts. Appellant was mistaken. Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.

Finally, appellant failed to overcome the presumption of prejudice to the State as required by NRS 34.800(2).² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

²We further conclude that the district court did not abuse its discretion in denying his motion for release.

³We 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. Abbi Silver, District Judge
Ayrick Talbo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk