

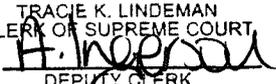
IN THE SUPREME COURT OF THE STATE OF NEVADA

SABIN GREGORY BARENDT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58412

FILED

SEP 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT,
BY 
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; Valorie Vega, Judge.

Appellant filed his petition on January 15, 2011, more than seven years after issuance of the remittitur on direct appeal on September 16, 2003. Barendt v. State, Docket No. 38912 (Order of Affirmance, August 19, 2003). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated a post-conviction petition for a writ of habeas corpus.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).

²Barendt v. State, Docket No. 43665 (Order of Affirmance, April 4, 2005). Appellant also litigated an additional post-conviction petition, but voluntarily dismissed his appeal from the denial of the 2007 petition. Barendt v. State, Docket No. 50749 (Order Dismissing Appeal, June 17, 2008).

See 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(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

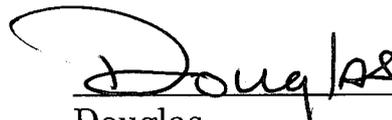
To the extent that appellant claimed that ineffective assistance of counsel for failing to challenge the charges constituted good cause to excuse his procedural defects, this claim was reasonably available to be raised in a timely petition and an ineffective assistance of counsel claim that is itself procedurally barred cannot be good cause. NRS 34.726; Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); see also Edwards v. Carpenter, 529 U.S. 446, 453 (2000). Appellant's claim that the State breached an agreement is likewise procedurally defaulted as this claim could have been raised within the one-year time period. Hathaway, 119 Nev. at 252, 71 P.3d at 506.

To the extent that appellant claimed that the procedural bars did not apply because he was raising an alleged jurisdictional defect, appellant's claim was patently without merit.³ Because appellant challenged the validity of the judgment of conviction, his petition was subject to the procedural bars set forth in NRS chapter 34. NRS 34.720; NRS 34.724. Further, the family court did not have original, exclusive

³Further, to the extent that appellant claimed that the alleged jurisdictional defect amounted to a fundamental miscarriage of justice that overcame application of the procedural bars, appellant failed to demonstrate any fundamental miscarriage of justice to overcome the procedural defects. See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

jurisdiction over charges of sexual assault on a minor, lewdness with a minor, child abuse and neglect, open or gross lewdness, and battery with intent to commit a crime as set forth in the criminal complaint. Nev. Const. art. 6, § 6; NRS 3.3220; NRS 3.223; NRS 171.010; NRS 171.196; NRS 173.025; NRS 432B.410. Finally, appellant failed to overcome the presumption of prejudice to the State. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Valorie Vega, District Judge
Sabin Gregory Barendt
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We 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.