

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE MIGUEL GUTIERREZ,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 58492

FILED

OCT 05 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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 Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant filed his petition on April 19, 2011, four years after the filing of his judgment of conviction on February 20, 2007.² Appellant's petition was therefore untimely filed. See NRS 34.726(1). Appellant's petition was also successive because his claims were disposed of on the

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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²No direct appeal was taken.

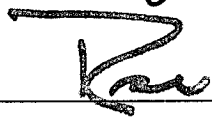
merits in an earlier proceeding.³ NRS 34.810(2). Appellant's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Appellant argued that he had good cause to excuse the procedural bars because of a federal court order staying federal proceedings to allow appellant to exhaust his claims in state court. Appellant failed to demonstrate that an impediment external to his defense excused his procedural defects. Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). Filing a procedurally barred petition for exhaustion purposes is not good cause because appellant's claims were reasonably available to be raised in a timely petition, Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003), and appellant's claims were in fact considered and rejected on the merits in the first post-conviction proceeding. Gutierrez v. State, Docket No. 52161 (Order of Affirmance, December 23, 2009). We therefore conclude that the district court did not

³Gutierrez v. State, Docket No. 52161 (Order of Affirmance, December 23, 2009).

err in denying appellant's petition as procedurally barred. Accordingly, we
ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Pickering


_____, Sr. J.
Rose


_____, Sr. J.
Shearing

cc: Hon. Robert W. Lane, District Judge
Jose Miguel Gutierrez
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk

⁴The Honorables Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.

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.