

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN CHRISTOPHER CRAIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58512

FILED

DEC 07 2011

TRACIE 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; Stefany Miley, Judge.

In his petition, filed on January 14, 2011, appellant claimed he received ineffective assistance of trial counsel and challenged the constitutionality of his conviction. In response to an order of this court, the attorney general advised that appellant had discharged his sentence on March 22, 2006. Because appellant had discharged his sentence prior to having filed the instant petition, the petition was not cognizable. Jackson v. State, 115 Nev. 21, 23, 973 P.2d 241, 242 (1999); Nev. Const. art. 6, § 6(1); NRS 34.360; NRS 34.724(1).

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).

Moreover, as a separate and independent ground to deny relief, appellant filed his petition more than ten years after the issuance of his judgment of conviction on October 25, 2000.² Appellant's petition was therefore untimely filed and, accordingly, was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See NRS 34.726(1). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

Appellant claimed that the ineffective assistance of his trial counsel constituted good cause to excuse the procedural bar. While the ineffective assistance of counsel may constitute good cause to excuse a procedural default, the ineffective-assistance claim must not itself be time-barred. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Further, to the extent that appellant claimed that his actual innocence should excuse the procedural bar, appellant did not demonstrate actual innocence because he failed to show 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,

²No direct appeal was taken. An amended judgment of conviction was filed on May 30, 2001, but none of the claims raised in appellant's petition were relevant to those changes. See Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.³

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Hon. Stefany Miley, District Judge
Steven Crain
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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.