

IN THE SUPREME COURT OF THE STATE OF NEVADA

MACK C. MASON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58517

FILED

NOV 17 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 Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

Appellant filed his petition on January 31, 2011, more than eight years after this court's September 3, 2002, issuance of the remittitur from his direct appeal. See Mason v. State, 118 Nev. 554, 51 P.3d 521 (2002). Appellant's petition was therefore untimely filed. See NRS 34.726(1). Appellant's petition was also successive and an abuse of the writ.² 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was therefore

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).

²Appellant filed an earlier proper person post-conviction petition for a writ of habeas corpus on September 5, 2002, which was voluntarily dismissed according to an order of the district court filed on October 15, 2002. Appellant then filed another proper person post-conviction petition for a writ of habeas on January 23, 2003 ("first petition"), which the
continued on next page . . .

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

First, appellant argued that he had good cause to excuse the procedural bars because the district court denied him the opportunity to supplement his first petition. Because a petitioner has no right to supplement a post-conviction habeas petition, NRS 34.750(5), appellant's argument failed to provide good cause to excuse the procedural bars.

Second, appellant argued that he had good cause to excuse the procedural bars because the district court denied him the opportunity to appeal its decision denying his first petition. Had the district court, as appellant claimed, failed to forward a notice of appeal to this court, it would have constituted an impediment external to the defense that may have excused compliance with the procedural default rules. Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). However, the record belied appellant's claim that he filed a timely notice of appeal with the district court. Rather, appellant filed a document entitled "appellant's brief," which failed to comport with the requirements of NRAP 3(c). Further, appellant admitted that he knew by January 2004 that no appeal had been docketed, yet he still waited seven years to file a new petition.

. . . continued

district court summarily denied on the merits. As discussed in more detail below, no appeal was taken from the district court's denial.

Therefore appellant failed to demonstrate good cause for the entire length of his delay.

Third, appellant argued that he had good cause to excuse the procedural bars because he did not understand Nevada's habeas procedures, was confused by the district court's failure to construe his brief as a notice of appeal, and/or was led astray by the federal court as to whether he had exhausted his claims in state court. Appellant's ignorance of procedural rules did not constitute an impediment external to the defense. Id. Further, filing a procedurally barred petition for exhaustion purposes would not constitute 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).

Fourth, appellant argued that he had good cause to excuse the procedural bars because NRS 34.750(1) violates the Equal Protection Clauses of the United States and Nevada Constitutions. Specifically, appellant claimed that indigent petitioners lack the legal skills necessary to avoid summary dismissal, resulting in disparate treatment of those wealthy enough to afford counsel and those who cannot and are thus forced to proceed in proper person. Neither appellant's indigence nor his ignorance of the law constituted impediments external to the defense and thus did not afford good cause to excuse the procedural bars. Lozada, 110 Nev. at 353, 871 P.2d at 946.

Fifth, appellant claimed that he had good cause to excuse the procedural bars because of retroactive changes in the law that were not legally available to him at the time of trial or of which his attorney was not aware. Appellant did not state what the changes were or why they could not have been raised in his timely first petition, and to the extent he

was claiming that the ineffective assistance of counsel provided good cause, that claim itself was procedurally barred and thus could not provide good cause. Hathaway, 119 Nev. at 252-53, 71 P.3d at 506.

Sixth, appellant argued that he had good cause to excuse the procedural bars because his underlying claims were meritorious. Because appellant did not state why the claims could not have been raised in his timely first petition, he failed to demonstrate good cause. Id. Finally, 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.

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Jerome T. Tao, District Judge
Mack C. Mason
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk