

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE D. SAMPSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58553

**FILED**

**OCT 05 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE AND DIRECTING CORRECTION OF  
JUDGMENT OF CONVICTION

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant filed his petition on January 7, 2011, more than five years after this court's December 27, 2005, issuance of the remittitur from his direct appeal. See Sampson v. State, 121 Nev. 820, 122 P.3d 1255 (2005). Appellant's petition was therefore untimely filed. See NRS 34.726(1). Appellant's petition was also successive and an abuse of the

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<sup>1</sup>This 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).

writ.<sup>2</sup> 34.810(1)(b)(2); 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(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).

Appellant first argued that he had good cause to excuse his procedural bars because the factual and legal bases for his claims of prosecutorial misconduct were not previously available. Appellant claimed that the State engaged in prosecutorial misconduct by entering into evidence (presumably in litigating his first post-conviction habeas petition) an improperly altered answering brief, judgment of conviction, and trial transcripts. Appellant failed to allege in what way the brief and judgment of conviction had been altered or when he learned of it. Further, appellant failed to demonstrate that his failure to obtain his transcripts was the result of an impediment external to the defense. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Appellant moved the district court in 2004 to provide him with trial transcripts at the State's expense, but his proper person motion failed to demonstrate that the grounds for which he claimed he needed transcripts had merit, Peterson v. Warden, 87 Nev. 134, 135, 483 P.2d 204, 205 (1971), and appellant was thus not entitled to transcripts at the State's

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<sup>2</sup>Sampson v. State, Docket No. 54135 (Order of Affirmance, December 10, 2010).

expense. Moreover, although appellant did specify several areas where his memory differed from what is reflected in the trial transcripts, this alone would not be evidence of misconduct and would thus not excuse the procedural bars.

Appellant also argued that he had good cause to excuse his procedural bars because he received ineffective assistance of appellate and post-conviction counsel. While the ineffective assistance of appellate counsel may constitute good cause to excuse a procedural default, the ineffective-assistance claim must not itself be time-barred, as was appellant's claim in this instance. Hathaway, 119 Nev. at 252-53, 71 P.3d at 606. In addition, because appellant is not entitled to the assistance of post-conviction counsel, any deficiency of post-conviction counsel cannot constitute good cause to excuse a procedural bar. See Crump v. Warden, 113 Nev. 293, 302-033, 934 P.2d 247, 252-53 (1997); McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996).

For the foregoing reasons, we conclude that the district court did not err in denying appellant's petition as procedurally barred. Further, appellant failed to overcome the presumption of prejudice pursuant to NRS 34.800(2).

Finally, we note that our review of the record indicates a typographical error in the judgment of conviction. Appellant was convicted of counts one through five pursuant to a jury verdict and of count 6 pursuant to a guilty plea. However, the judgment of conviction states that he was convicted pursuant to a guilty plea of all six counts. We direct the district court to enter a corrected judgment of conviction

accurately stating the means by which appellant was convicted. NRS 176.565. Accordingly, we

ORDER the judgment of the district court AFFIRMED AND REMAND this matter to the district court for correction of the judgment of conviction.<sup>3</sup>

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, Sr. J.  
Rose

  
\_\_\_\_\_, Sr. J.  
Shearing

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<sup>3</sup>The 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.

cc: Hon. Michelle Leavitt, District Judge  
Willie D. Sampson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk