

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN JAMES NASBY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58579

**FILED**

FEB 08 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Anderson*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Appellant filed his petition on February 18, 2011, nearly ten years after this court's March 6, 2001, issuance of the remittitur from his direct appeal. See Nasby v. State, Docket No. 35319 (Order of Affirmance, February 7, 2001). Appellant's petition was therefore untimely filed. See NRS 34.726(1). Appellant's petition was also successive and an abuse of

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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).

the writ.<sup>2</sup> NRS 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 the procedural bars because he needed to federalize his claims. Federalization of his claims was not an impediment external to the defense. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). The claims raised were reasonably available to be raised in a timely fashion. See id. at 252-53, 71 P.3d at 506.

Appellant also argued that he had good cause to excuse the procedural bars because of inadequate access to an itself-inadequate law library at Ely State Prison. Appellant's claim did not demonstrate good cause because it failed to explain why he could not have raised the instant claims in his prior proceedings. Notably, appellant was represented by appointed counsel in both his direct appeal and his first, timely post-conviction petition for a writ of habeas corpus and thus had "meaningful" access to the courts through "assistance from persons trained in the law." Bounds v. Smith, 430 U.S. 817, 828 (1977), limited by Lewis v. Casey, 518

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<sup>2</sup>Nasby v. State, Docket No. 35319 (Order of Affirmance, February 7, 2001); Nasby v. State, Docket No. 47130 (Order of Affirmance, June 18, 2007).

U.S. 343 (1996). Further, 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.<sup>3</sup>

Cherry, J.  
Cherry

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

cc: Hon. David B. Barker, District Judge  
Brendan James Nasby  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>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. We note that the record is unclear as to whether the district court considered appellant's request for the appointment of post-conviction counsel. However, with the exception of indigency, appellant failed to demonstrate the existence of any factor set forth in NRS 34.750. To the extent that appellant has attempted to present claims or facts in his proper person submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.