

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LEE MIMS, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58813

**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.<sup>1</sup> Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant filed his petition on May 3, 2011, more than twelve years after issuance of the remittitur on direct appeal on October 13, 1998. Mims v. State, Docket No. 29141 (Order Dismissing Appeal, September 24, 1998). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated four prior post-conviction petitions for a writ of habeas corpus.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was

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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).

<sup>2</sup>Mims v. State, Docket No. 34700 (Order of Affirmance, June 27, 2001); Mims v. Warden, Docket No. 40237 (Order of Affirmance, May 23, 2003); Mims v. State, Docket No. 47575 (Order of Affirmance, December  
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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).

In his petition, appellant claimed that he had good cause to excuse his procedural defects due to newly discovered evidence of a conflict of interest. Appellant claimed that he was never informed that the Washoe County Public Defender's Office had filed a notice of conflict in representation and that he only recently learned of this conflict when he received a copy of the notice. This claim was reasonably available to be raised in a timely petition.<sup>3</sup> Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Further, appellant failed to demonstrate that an actual conflict of interest adversely affected the performance of Jack Alian, the counsel who represented appellant due to the conflict with the Washoe County Public Defender's Office. Strickland v. Washington, 466 U.S. 668, 692 (1984); Cuyler v. Sullivan, 446 U.S. 335, 348 (1980); Leonard v. State, 117 Nev. 53, 63, 17 P.3d 397, 404 (2001). Appellant has in fact complained about Jack Alian's representation using the same set of facts in three prior petitions filed in 2002 and 2006, and those arguments as they related to his attempt to demonstrate good cause were considered and rejected. The

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*... continued*

21, 2006). The decision of the district court to deny a March 2002 petition was not appealed to this court.

<sup>3</sup>The record reveals that appellant was aware of the change in representation as he wrote a letter to the justice court in 1995 complaining that the Washoe County Public Defender's Office and a private attorney had "dropped" him. The documentation attached to the petition as newly discovered evidence was reasonably available to appellant within the one-year period for a timely petition.

doctrine of the law of the case prevents further litigation of this good cause argument and cannot be avoided by a more detailed and precisely focused argument made upon reflection of the prior proceedings. Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Thus, the district court did not err in rejecting this good cause argument.

Next, appellant claimed that he had good cause to excuse his procedural defects because he was mentally incompetent. While acknowledging that he has litigated previous petitions, appellant stated that his competence waivered over time and that prevented him from completely litigating the prior petitions. Appellant asserted that the help he received from inmate law clerks did not cure the defects in his competency. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects because he failed to demonstrate that his mental health status prevented him from raising claims in a timely fashion. Hathaway, 119 Nev. at 252, 71 P.3d at 506. Further, poor assistance from inmate law clerks is not good cause. Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Notably, appellant was found to be competent prior to trial. Thus, the district court did not err in rejecting this good cause argument. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.  
Douglas

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

cc: Hon. Janet J. Berry, District Judge  
David Lee Mims, Jr.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk