

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCENT DEPASQUALE,
Appellant,
vs.
ROBERT LEGRAND, WARDEN; AND
THE STATE OF NEVADA, ET. AL.,
Respondents.

No. 58855

FILED

NOV 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingerson
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus.¹ First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant filed his petition on June 17, 2011, almost twenty years after issuance of the remittitur on direct appeal on October 23, 1991, and more than eighteen years after entry of the amended judgment of conviction on January 19, 1993. DePasquale v. State, 106 Nev. 843, 803 P.2d 218 (1990). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed two post-conviction petitions, and it constituted an abuse of the writ as he raised claims new and different from those raised in his

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).

previous petitions.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was 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).

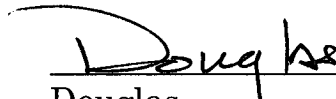
Appellant first claimed that the procedural bars did not apply because he was filing his petition pursuant to NRS 34.360 and he was challenging the jurisdiction of the district court. The district court did not err in rejecting this argument. Because appellant's petition challenged the validity of his judgment of conviction, appellant's petition was properly construed to be a post-conviction petition for a writ of habeas corpus. NRS 34.724(2)(b). Further, appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010. Thus, NRS 34.726 and NRS 34.810 were properly applied to his petition.³ NRS 34.720.

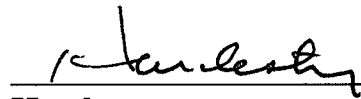
²DePasquale v. State, Docket No. 44741 (Order of Affirmance, May 2, 2006) (litigating July 15, 2003 petition). Appellant also filed a petition for post-conviction relief in 1992. Appellant subsequently agreed to dismiss the petition for post-conviction relief in exchange for the State's unspecified confession of error at the penalty phase and the agreement to vacate the sentence of death and impose a sentence of life without the possibility of parole. Appellant additionally agreed not to appeal the amended judgment of conviction. The district court, after conducting a thorough canvass of appellant on January 6, 1993, agreed to the stipulation of the parties and the modification of the sentence. An amended judgment of conviction memorializing the district court's decision was entered on January 19, 1993.

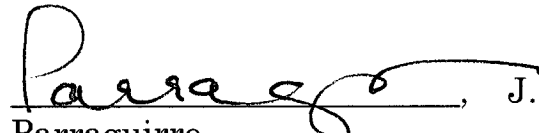
³Appellant's attempt to overcome his procedural defects by characterizing his petition as a "First Amendment Petition" also lacked merit, as appellant failed to demonstrate any unconstitutional prior restraint of his First Amendment rights. See NRS 34.185. Appellant's arguments relating to the timing of the entry of the amended judgment of conviction were patently without merit.

To the extent that appellant claimed that ineffective assistance of counsel constituted good cause to excuse his procedural defects, an ineffective assistance of counsel claim that is itself procedurally barred cannot be good cause. NRS 34.726; Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); see also Edwards v. Carpenter, 529 U.S. 446, 453 (2000). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Douglas

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. James E. Wilson, District Judge
Vincent Depasquale
Attorney General/Carson City
Carson City Clerk