

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCOS CHALA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59353

FILED

APR 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angelica*
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; Valorie J. Vega, Judge.

Appellant filed his petition on May 25, 2011, almost thirteen years after issuance of the remittitur on direct appeal on August 18, 1998. Chala v. State, Docket No. 26719 (Order Dismissing Appeal, July 28, 1998). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated two post-conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different

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).

from those raised in his 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 claimed that he had good cause to excuse the procedural defects because of his lack of legal knowledge and because he did not understand English. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Further, appellant's alleged language barrier would not provide good cause in the instant case as appellant litigated two prior post-conviction petitions for a writ of habeas corpus. See Mendoza v. Carey, 449 F.3d 1065, 1070 (9th Cir. 2006) (holding that equitable tolling requires a non-English-speaking petitioner demonstrate that during the time period, the petitioner was unable to procure either legal materials in his own language or translation assistance despite diligent efforts). Finally, to the extent that appellant claimed that the 2007 amendments to NRS 193.165, see 2007 Nev. Stat., ch. 525, § 13, at 3188-89, provided good cause, this court has determined that the 2007 amendments to NRS 193.165 do not apply retroactively. State v. Dist. Ct. (Pullin), 124 Nev. 564, 188 P.3d 1079 (2008). Thus, the

²Chala v. State, Docket No. 35631 (Order of Affirmance, July 6, 2001); Chala v. State, Docket No. 56603 (Order of Affirmance, July 15, 2011).

2007 amendments would not provide good cause in the instant case.³

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Valorie J. Vega, District Judge
Marcos Chala
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Appellant further filed the petition more than one year after Pullin was decided.