

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD V. BROWN, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59696

FILED

SEP 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a motion to vacate judgment of conviction.¹ Eighth Judicial District Court, Clark County; Doug Smith, Judge.

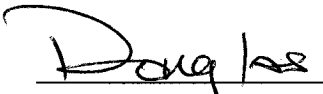
Appellant filed his motion on October 4, 2011, more than eight years after issuance of the remittitur on direct appeal on August 5, 2003.² Brown, Sr. v. State, Docket No. 39795 (Order of Affirmance, July 9, 2003). Thus, appellant's motion was untimely filed. See NRS 34.726(1). Moreover, appellant's motion was successive because he had previously


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).


²Because appellant challenged his conviction and sentence, we conclude that the district court properly construed appellant's motion as a post-conviction petition for a writ of habeas petition. See NRS 34.724(2)(b) (stating that a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them").

litigated two post-conviction petitions for a writ of habeas corpus.³ See 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(3). Appellant did not attempt to demonstrate good cause to excuse his procedural defects. Thus, we conclude that the district court did not err in denying his motion as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Doug Smith, District Judge
Howard V. Brown, Sr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Brown, Sr. v. State, Docket No. 42784 (Order of Affirmance, August 19, 2004); Brown Sr. v. State, Docket No. 56769 (Order of Affirmance, March 18, 2011).

⁴We 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.