

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EDWARD CROSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59712

FILED

JUN 14 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 of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellant filed his petition on July 12, 2011, more than ten years after issuance of the remittitur on direct appeal on September 6, 2000. Cross v. State, Docket No. 32533 (Order Dismissing Appeal, August 11, 2000). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was also successive and an abuse of the writ because he had previously filed a post-conviction petition for a writ of

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).


habeas corpus, and the instant petition raises a new claim.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Therefore, 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). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).


Appellant claimed that the Ninth Circuit Court of Appeals' decisions in Chambers v. McDaniel, 549 F.3d 1191 (9th Cir. 2008), and Polk v. Sandoval, 503 F.3d 903 (9th Cir. 2007), provided good cause to excuse the delay in raising claims regarding the premeditation and deliberation jury instruction. Appellant made this same argument in his previous petition and failed to provide a reasonable explanation for why he could not litigate his claims within one year from these decisions. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003) (recognizing that good cause must be an impediment external to the defense). The doctrine of the law of the case prevents further litigation of this issue. Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Thus, appellant failed to demonstrate good cause. To the extent that appellant claimed that he was actually innocent, he failed to identify new evidence or to support his conclusory assertion with any factual

²Cross v. State, Docket No. 58153 (Order of Affirmance, September 15, 2011).

allegations. See Calderon v. Thompson, 523 U.S. 538, 559 (1998) (actual innocence requires the petitioner to show that “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence” (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Accordingly, we conclude that the district court did not err in denying appellant’s petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Linda Marie Bell, District Judge
James Edward Cross
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk