

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON LEE PARISH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59945

FILED

JUL 25 2012

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

Appellant filed his petition on August 3, 2011, more than six years after issuance of the remittitur on direct appeal on April 12, 2005. Parish v. State, Docket No. 41891 (Order of Affirmance, March 17, 2005). 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 to the extent that he raised a claim not previously litigated in his 2006 and 2009 petitions.² See NRS

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).

²Parish v. State, Docket No. 55130 (Order of Affirmance, June 9, 2010) (2009 petition). Appellant did not appeal the denial of his 2006 petition.

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). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).


Appellant claimed that he had good cause to re-litigate his claim that the district court erred in failing to give a lesser-included offense jury instruction (second-degree murder jury instruction) based on this court's decision in Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006). Appellant filed his petition almost five years after this court issued its decision in Rosas.³ Thus, even if Rosas established good cause to excuse the procedural bars, appellant failed to establish good cause for the entire length of his delay.⁴ See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Moreover, even assuming that this court, in

³We note that appellant filed his second petition on August 27, 2009, and failed even in that untimely and successive petition to raise a good cause argument based on Rosas.


⁴To the extent that appellant claimed that he was not able to raise the claim earlier because of a lack of physical access to the law library, appellant failed to demonstrate that this constituted good cause, an impediment external to the defense, as he litigated two post-conviction petitions during the time he claimed he had inadequate access. See Hathaway, 119 Nev. at 252-53, 71 P.3d at 506. Notably, appellant's 2009 petition contained numerous legal citations, and this court rejected this very same good cause argument in the appellate proceedings on that petition. Parish v. State, Docket No. 55130. We note that during this time period appellant also litigated a motion to vacate the conviction, which contained citation to a statute and case law. The doctrine of the law of the case prevents further litigation of this good cause argument. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

the direct appeal, erred in relying upon Wegner v. State, 116 Nev. 1149, 14 P.3d 25 (2000), overruled in part by Rosas, 122 Nev. 1258, 147 P.3d 1101, this court determined that even if a second-degree murder jury instruction should have been given, the failure to give a second-degree murder instruction was harmless error because of the overwhelming evidence of guilt. Thus, appellant failed to demonstrate actual prejudice—that any error worked to his actual and substantial disadvantage. See Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993). Finally, appellant failed to overcome the presumption of prejudice to the State. Therefore, we conclude that the district court did not err in denying the petition as procedurally barred and barred by laches. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.

Douglas

 _____, J.

Gibbons

 _____, J.

Parraguirre

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