

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 59985

FILED

SEP 12 2012

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
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 Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Appellant filed his petition on September 16, 2011, more than thirty-four years after entry of the judgment of conviction on January 19, 1977.² Thus, appellant's petition was untimely filed.³ See NRS 34.726(1). Moreover, appellant's petition 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).

²Appellant's direct appeal was dismissed as untimely. Proctor v. State, Docket No. 11343 (Order Dismissing Appeal, December 27, 1978).

³We note that the petition was also untimely from the January 1, 1993, effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 5, at 75-76; 1991 Nev. Stat. ch. 44, § 32, at 92.

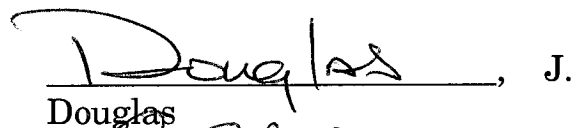
filed four post-conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.⁴ See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

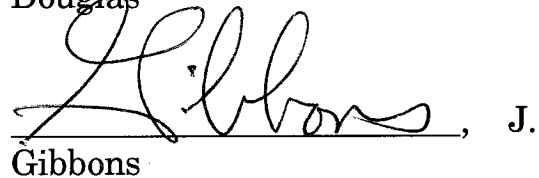
In an attempt to demonstrate good cause, appellant claimed that the district court lacked subject matter jurisdiction because the justice court dismissed the information against appellant after a preliminary hearing. First, this claim does not provide good cause because it does not constitute a legal reason for failure to raise this claim earlier. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). This claim does not implicate jurisdiction. Nev. Const. art. 6, § 6; NRS 171.010. Moreover, as a separate and independent ground to deny relief, this claim is without merit. After the information was dismissed, the State correctly sought and obtained an indictment from a grand jury. See NRS 178.562(2); State of Nevada v. District Court, 114 Nev. 739, 743, 964 P.2d 48, 50 (1998). Appellant was convicted pursuant to that indictment and

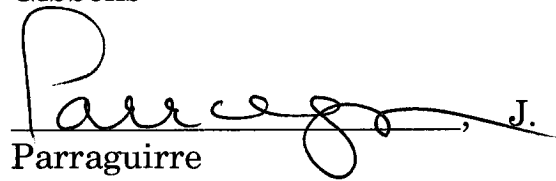
⁴Proctor v. State, Docket No. 33318 (Order of Affirmance, May 16, 2001); Proctor v. State, Docket No. 37278 (Order of Affirmance, July 3, 2001); Proctor v. State, Docket No. 48393 (Order of Affirmance, May 16, 2007); Proctor v. State, Docket No. 55476 (Order Dismissing Appeal, May 7, 2010).

not the dismissed information as claimed by appellant.⁵ Therefore, we conclude that the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.⁶

 _____, J.
Douglas

 _____, J.
Gibbons

 _____, J.
Parraguirre

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

⁵Further, appellant failed to overcome the presumption of prejudice to the State.

⁶We 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.