

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES DEJUAN MORRIS,  
Appellant,  
vs.  
WARDEN, N.D.O.P.; AND THE STATE  
OF NEVADA,  
Respondents.

No. 60116

**FILED**

NOV 15 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY H. Angou  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; James A. Brennan, Senior Judge.

Appellant filed his petition on July 12, 2010, almost nine years after issuance of the remittitur on direct appeal on December 11, 2001. Morris v. State, Docket No. 35030 (Order Affirming in Part, Reversing in Part, and Remanding, November 13, 2001). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition 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 petition.<sup>1</sup> 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). Moreover, because the

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<sup>1</sup>Morris v. State, Docket No. 44938 (Order of Affirmance, June 9, 2006).

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

Appellant first argues the procedural bars should not apply because this court fails to consistently apply those bars. Appellant's argument is without merit. The procedural bars are applied consistently. Pellegrini v. State, 117 Nev. 860, 886, 34 P.3d 519, 536 (2001).

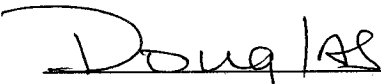
Second, appellant argues that he has good cause to raise additional claims due to the failure of his first post-conviction counsel to raise those claims and exhaust them for purposes of raising them in federal court. Appellant's argument lacks merit as appellant had no statutory right to post-conviction counsel, and thus the ineffective assistance of post-conviction counsel does not provide good cause for a successive and untimely petition. See McKague v. Warden, 112 Nev. 159, 164-65 & n.5, 912 P.2d 255, 258 & n.5 (1996); Crump v. Warden, 113 Nev. 293, 303 & n.5, 934 P.2d 247, 253 & n.5 (1997). Further, exhaustion of claims in order to seek federal court review does not demonstrate good cause. See Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989); see also Edwards v. Carpenter, 529 U.S. 446, 452-53 (2000).

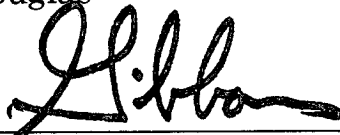
Next, appellant argues that he is actually innocent. However, appellant does not demonstrate actual innocence because he fails to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also Pellegrini, 117 Nev. at 887, 34 P.3d at 537; Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

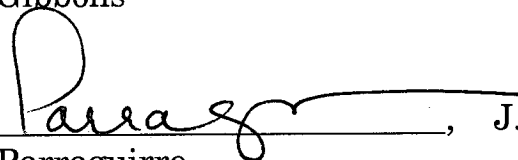
Further, appellant fails to overcome the presumption of prejudice to the State. Therefore, the district court did not err in

dismissing the petition as procedurally barred without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Chief Judge, Second Judicial District Court  
Hon. James A. Brennan, Senior Judge  
Mary Lou Wilson  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk