

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL STEVEN GUARDADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60662

FILED

NOV 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 Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant filed his petition on February 3, 2012, more than 6 years after this court's September 13, 2005, issuance of the remittitur from his direct appeal. See Guardado v. State, Docket No. 44331 (Order of Affirmance, August 18, 2005). Appellant's petition was therefore untimely filed. See NRS 34.726(1). Appellant's petition was also successive because all claims had been raised in his first post-conviction habeas petition.² NRS 34.810(2). Appellant's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

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).

²See Guardado v. State, Docket No. 52594 (Order of Affirmance, February 3, 2010).

Appellant first argued that he had good cause to excuse the procedural defects because he needed to exhaust his state remedies. Filing a procedurally barred petition for exhaustion purposes is not good cause because appellant's claims were reasonably available to be raised in a timely petition. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); see also Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). Further, we note that appellant did raise all of the instant claims in that first petition, although not all were raised on his appeal.

Appellant next argued that he had good cause to excuse the procedural defects because counsel failed to raise all of his claims on appeal from the denial of his first, timely post-conviction habeas petition. Appellant failed to demonstrate that an impediment external to his defense excused his procedural defects. Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). To the extent appellant argued that the ineffective assistance of prior post-conviction counsel provided good cause, appellant had no right to the effective assistance of post-conviction counsel on appeal. McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996); see also Martinez v. Ryan, 566 U.S. ___, ___, 132 S. Ct. 1309, 1320 (2012).

For the foregoing reasons, we conclude that the district court did not err in denying the petition as procedurally barred. Accordingly, we ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Parraguirre, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Manuel Steven Guardado
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk