

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN GUAYDACAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60679

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. 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; Stefany Miley, Judge.


Appellant filed his petition² on August 9, 2011, more than three years after issuance of the remittitur on direct appeal on February 26, 2008. Guaydacan v. State, Docket No. 47146 (Order of Affirmance, January 30, 2008). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See id.


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).

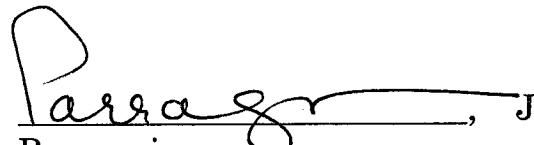
²Appellant titled his petition a "Supplement to Petition for a Writ of Habeas Corpus." However, we note that this petition was not actually a supplemental petition, as no other petition for a writ of habeas corpus was pending at the time that he filed it.

In an attempt to demonstrate cause, appellant claimed that his appointed counsel in his initial post-conviction proceedings failed to file a timely petition, and counsel's ineffective assistance should not be held against appellant. Appellant made this same argument on appeal from the denial of his previous petition, and this court rejected it because the ineffective assistance of post-conviction counsel does not constitute good cause to excuse the untimely filing of a petition. Guaydacan v. State, Docket No. 54736 (Order of Affirmance, September 10, 2010). 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, we conclude that the district court did not err in denying the petition as procedurally barred.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

³Because the petition was procedurally barred, we conclude that the district court did not err in denying appellant's motions for an evidentiary hearing, appointment of counsel, and leave to proceed in forma pauperis.

cc: Hon. Stefany Miley, District Judge
Benjamin Guaydacan
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk