

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE JAMES THOMAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61009

FILED

JAN 16 2013

TRACIE 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 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 February 21, 2012, more than 4 years after this court's January 4, 2008, issuance of the remittitur from his direct appeal. See Thomas v. State, Docket No. 49486 (Order of Affirmance, December 10, 2007). Appellant's petition was therefore untimely filed. See NRS 34.726(1). Appellant's petition was also successive because he had previously filed 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.² 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).

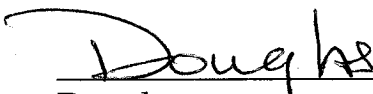
²See Thomas v. State, Docket No. 51707 (Order of Affirmance, May 13, 2009). No appeal was taken from the denial of appellant's first post-conviction habeas petition, filed on July 24, 2007.


34.810(1)(b)(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(1)(b); NRS 34.810(3).

Appellant 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). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

³We 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.

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