

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK ANTHONY HANSON,
Appellant,
vs.
JACK PALMER, WARDEN,
Respondent.

No. 62033

FILED

SEP 16 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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 Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

Appellant filed his petition on October 11, 2006, more than five years after issuance of the remittitur on direct appeal on February 22, 2001. *Hanson v. State*, Docket No. 34156 (Order of Affirmance, November 14, 2000). 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 the prior determination was on the merits.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a

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).

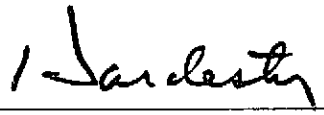
²*Hanson v. Warden*, Docket No. 40665 (Order of Affirmance, December 19, 2003).

demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); 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).

Appellant claimed that his appellate and previous post-conviction counsel did not properly raise and exhaust two claims, which did not allow him to proceed in federal court on those two claims. That counsel for appellant did not exhaust state remedies in appellant's earlier court proceedings did not demonstrate that there was an impediment external to the defense that should excuse the procedural bars. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); see also *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). Further, appellant's argument regarding post-conviction counsel as good cause lacked 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); see also *Brown v. McDaniel*, 130 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 60, August 7, 2014) (explaining that post-conviction counsel's performance does not constitute good cause to excuse the procedural bars unless the appointment of post-conviction counsel was mandated by statute); *Coleman v. Thompson*, 501 U.S. 722, 755-757 (1991) (holding that petitioner did not have a "constitutional right to counsel on appeal from the state habeas trial court judgment" and that a claim of ineffective assistance of counsel during state habeas appellate proceedings does not constitute cause to excuse the procedural defects).

Finally, appellant failed to overcome the presumption of prejudice to the State. Therefore, the district court did not err in dismissing the petition as procedurally barred and barred by laches. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Hardesty


_____, J.
Douglas

CHERRY, J., concurring:

Although I would extend the equitable rule recognized in *Martinez* to this case because appellant was convicted of murder and is facing a severe sentence, *see Brown v. McDaniel*, 130 Nev. ___, ___ P.3d ___ (Adv. Op. No. 60, August 7, 2014) (Cherry, J., dissenting), I concur in the judgment on appeal in this case because the State pleaded laches

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter and the State's opposition to appellant's motion to vacate conviction, 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.

under NRS 34.800(2) and appellant failed to rebut the presumption of prejudice to the State.

Cherry, J.
Cherry

cc: Hon. Nancy L. Porter, District Judge
Mark Anthony Hanson
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk