

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID AUGUST KILLE, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62741

FILED

NOV 13 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
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; Douglas W. Herndon, Judge.

Appellant filed his petition on October 14, 2012, 8 years after issuance of the remittitur on direct appeal on March 30, 2004. *Kille v. State*, Docket No. 42254 (Order of Affirmance, March 4, 2004). 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.² *See* NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual

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*Kille v. State*, Docket No. 45216 (Order of Affirmance, October 11, 2009).

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).

In an attempt to establish good cause, appellant claimed that he was unaware of the facts and laws regarding his claims and that counsel failed to inform him of those facts and laws. Appellant's claim failed to demonstrate good cause for filing an untimely post-conviction petition because he did not demonstrate an impediment external to the defense. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003), *Phelps v. Director, Prisons*, 104 Nev. 656, 600, 764 P.2d 1303, 1306 (1988). Further, appellant's claim that counsel was ineffective did not demonstrate good cause because an ineffective-assistance-of-counsel claim cannot be good cause when the ineffective-assistance-of-counsel claim is itself procedurally barred.³ See *Hathaway v. State*, 119 Nev. at 252, 71 P.3d at 507; *Harris v. Warden*, 114 Nev. 956, 964 P.2d 785 (1998).

Next, appellant claimed that the district court lacked jurisdiction over his case because he was originally charged and found guilty in the juvenile court and because he was improperly charged by way of criminal complaint. Appellant failed to demonstrate that these claims implicated the jurisdiction of the district court. Nev. Const. art. 6, § 6; NRS 171.010. Further, contrary to appellant's claim, he was not convicted

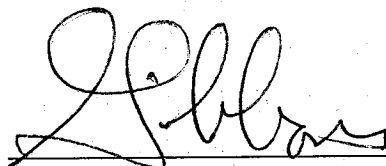
³Although the district court erred in concluding that appellant failed to allege good cause, we nevertheless affirm the district court's decision for the reasons discussed in this order. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).


in juvenile court. Instead, the proceedings in juvenile court appear to have involved placing the victim in protective custody. In addition, a criminal complaint is a proper way to institute criminal proceedings against a defendant. NRS 171.102; NRS 171.106.

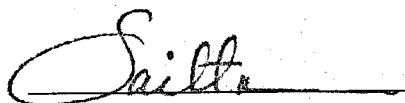
Finally, appellant failed to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).

Having determined that the district court did not err in denying the petition as procedurally barred, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

⁴We 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. Douglas W. Herndon, District Judge
David August Kille, Sr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk