

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY LYNN FRANKLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63352

FILED

DEC 12 2013

TAMIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant filed his petition on February 21, 2013, more than five years after issuance of the remittitur on direct appeal on January 22, 2008. *Franklin v. State*, Docket No. 48848 (Order of Affirmance, December 27, 2007). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated a post-conviction petition for a writ of habeas corpus on the merits, 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(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See

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*Franklin v. State*, Docket No. 52422 (Order of Affirmance, December 11, 2009).

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).

Relying upon *Edwards v. State*, 112 Nev. 704, 918 P.2d 321 (1996), appellant claimed that the procedural bars did not apply to him because he raised claims concerning the validity of his sentence. Appellant was in error. Procedural bars are mandatory in habeas corpus, and there is no exception based on a claim of sentencing error. See *State v. Eighth Judicial Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005); see also NRS 34.726. Appellant did not attempt to provide any good cause argument to excuse his procedural defects. Even assuming that appellant's petition could be construed as a motion to correct an illegal sentence, appellant's claims fell outside the scope of claims permitted in a motion to correct an illegal sentence. See *Edwards*, 112 Nev. at 707, 918 P.2d at 324. Appellant also failed to overcome the presumption of prejudice to the State. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

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. Jessie Elizabeth Walsh, District Judge
Jeffrey Lynn Franklin
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk