

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY W. GRIMALDI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63459

FILED

JAN 16 2014

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; David B. Barker, Judge.

Appellant filed his petition on March 13, 2013, more than 39 years after issuance of the remittitur on direct appeal on February 26, 1974. *Grimaldi v. State*, 90 Nev. 83, 518 P.2d 615 (1974). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition constituted an abuse of the writ as he had previously filed six post-conviction petitions for a writ of habeas corpus and raised claims new and different from those raised in his previous petitions.² 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 *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²*Grimaldi v. State*, Docket No. 54535 (Order of Affirmance, March 11, 2010); *Grimaldi v. State*, Docket Nos. 37550 and 38109 (Order of Affirmance, December 18, 2001); *Grimaldi v. State*, Docket Nos. 30516 and 33508 (Order Dismissing Appeals, May 27, 1999). Appellant also filed a
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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 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).

First, appellant claimed he had good cause because he was forcibly medicated for mental health reasons and was unable to properly assert legal defenses until his mind cleared in 1997. This failed to demonstrate good cause to overcome the procedural bars. See *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner's claim of organic brain damage, borderline mental retardation, and reliance on the assistance of an inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post-conviction petition).

Second, appellant claimed the procedural bars did not apply because he did not challenge the validity of his conviction, but rather challenged the legality of his continued confinement in prison. Appellant's claim was without merit. All of his claims challenged the conviction and sentence and therefore were challenges to the validity of his conviction and subject to the procedural bars in NRS chapter 34. See *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005)

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post-conviction petition for a writ of habeas corpus in the district court on January 27, 2004, but did not appeal the district court's denial of that petition.

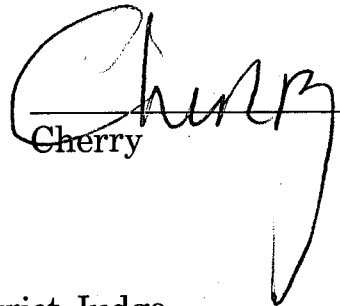
("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory.").

In addition, appellant failed to overcome the presumption of prejudice to the State. Accordingly, the district court properly denied appellant's petition as procedurally barred and without good cause. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. David B. Barker, District Judge
Timothy W. Grimaldi
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk