

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WHEATON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63465

FILED

JAN 16 2014

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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; James M. Bixler, Judge.

Appellant filed his petition on February 6, 2013, more than eight years after entry of the judgment of conviction on December 8, 2004. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition constituted an abuse of the writ as he raised a claim 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 prejudice. See NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically

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*Wheaton v. State*, Docket No. 58311 (Order of Affirmance, May 10, 2012).

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pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

In an attempt to overcome the procedural bars, appellant claimed that he had difficulty obtaining his case file from his attorney and claimed that he was actually innocent as demonstrated by documents that purportedly show he was out of the country for a portion of the time period he was alleged to have committed the offenses. However, the law-of-the-case doctrine precludes further litigation of these good cause and actual innocence claims, see *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975), because they were considered and rejected on appeal from the denial of appellant's first petition. *Wheaton v. State*, Docket No. 58311 (Order of Affirmance, May 10, 2012). The law of the case "cannot be avoided by a more detailed and precisely focused argument." *Hall*, 91 Nev. at 316, 535 P.2d at 799. While appellant claimed that this court erred in its disposition of these issues, appellant failed to demonstrate that the law of the case should not be applied. *Tien Fu Hsu v. Cnty. of Clark*, 123 Nev. 625, 630-31, 173 P.3d 724, 728-29 (2007) (discussing when the doctrine of the law of the case should not be applied). Therefore, appellant is not entitled to relief for these claims.

Next, appellant appeared to assert that the procedural bars did not apply because he had to exhaust state remedies so that he can proceed in federal court. Exhaustion of state remedies in order to seek federal court review was insufficient to demonstrate good cause. See *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). Therefore,

the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. James M. Bixler, District Judge
James Wheaton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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.