

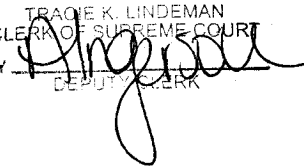
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63661

FILED

JAN 16 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  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; Michelle Leavitt, Judge.

Appellant filed his petition on June 14, 2013, more than thirty years after issuance of the remittitur on direct appeal on May 10, 1983. *Burkett v. State*, Docket No. 13600 (Order Dismissing Appeal, April 21, 1983). Thus, appellant's petition was untimely filed.² See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed numerous post-conviction petitions for relief.³ See NRS 34.810(2).

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).

²Appellant's petition was also untimely from the January 1, 1993, effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 5, at 75-76; 1991 Nev. Stat., ch. 44, § 32, at 92.

Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

In an attempt to demonstrate good cause to excuse the procedural defects, appellant claimed that the issue was a new violation and could not have been raised previously. Appellant claimed that his sentence had become unconstitutional as the possibility of parole could not be enforced because of violations by the Nevada Department of Corrections⁴ that he was unable to challenge in a petition for a writ of habeas corpus. "We have repeatedly held that a petition for writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof." *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also *Rogers v. Warden*, 84 Nev. 539, 445 P.2d 28 (1968). Appellant's inability to challenge conditions of confinement in a petition for a writ of habeas corpus did not provide good cause to overcome the procedural bar. Furthermore, appellant failed to demonstrate that an impediment external to the defense excused his procedural defects. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

...continued

³*Burkett v. Warden*, Docket No. 19446 (Order Dismissing Appeal, November 21, 1989); *Burkett v. State*, Docket No. 34767 (Order of Affirmance, July 10, 2001); *Burkett v. State*, Docket No. 39400 (Order of Reversal and Remand, February 6, 2003); *Burkett v. State*, Docket No. 41504 (Order of Affirmance, March 5, 2004); *Burkett v. State*, Docket No. 45769 (Order of Affirmance, November 15, 2005).

⁴Appellant alleged that the Nevada Department of Corrections falsified parole reports, unlawfully placed appellant on high risk potential status, and issued false misconduct reports.

Accordingly, we conclude that the district court did not err in denying appellant's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Michelle Leavitt, District Judge
Joel Burkett
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk