

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS HENRY LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63756

FILED

FEB 13 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER AFFIRMING IN PART AND DISMISSING IN PART

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus and motion to vacate sentence.¹ Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

Post-Conviction Petition

Appellant filed his petition on March 1, 2013, three years after issuance of the remittitur on direct appeal on March 2, 2010. *Lewis v. State*, Docket No. 52740 (Order of Affirmance, February 3, 2010). 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

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).

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 NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

In an attempt to excuse his procedural defects, appellant claimed that the United States Supreme Court decisions in *Lafler v. Cooper*, 566 U.S. ___, 132 S. Ct. 1376 (2012), and *Missouri v. Frye*, 566 U.S. ___, 132 S. Ct. 1399 (2012), provided good cause to raise his claim that standby trial counsel was ineffective for advising him not to take two different plea agreements offered during trial. Appellant failed to demonstrate that these cases provided good cause because they do not apply to him. First, appellant represented himself at trial and was not entitled to the appointment of standby counsel, *Harris v. State*, 113 Nev. 799, 804, 942 P.2d 151, 155 (1997), and therefore, he was not entitled to the effective assistance of standby counsel, see generally *McKague v. Warden*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996) (holding that a post-conviction petitioner who has no constitutional or statutory right to the appointment of counsel has no right to the effective assistance of post-conviction counsel); see also *Faretta v. California*, 422 U.S. 806, 835 (1975) (stating that “[w]hen an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel”).

Second, even if these cases did apply to standby counsel, appellant failed to demonstrate that these cases apply retroactively

²*Lewis v. State*, Docket No. 57050 (Order of Affirmance, May 9, 2011).

because appellant's case was final when *Cooper* and *Frye* were decided. Even if these cases announced new rules of constitutional law, appellant failed to allege facts to support that he met either exception to the general principle that such rules do not apply retroactively to cases which were already final when the new rules were announced. *Colwell v. State*, 118 Nev. 807, 816-17, 59 P.3d 463, 469-70 (2002). Therefore, the district court did not err in denying this good cause claim.

Appellant also cited to *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), as good cause to excuse his procedural defaults. Appellant failed to provide any argument as to how this case provided good cause or applied to appellant. Therefore, the district court did not err in denying the petition as procedurally barred.

Motion to Vacate Sentence

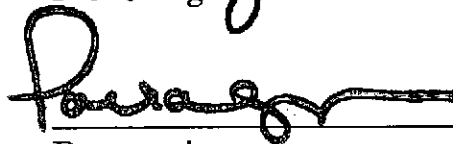
Because no statute or court rule permits an appeal from an order denying a motion to vacate sentence, we lack jurisdiction over this portion of the appeal. *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Accordingly, we

ORDER the judgment of the district court AFFIRMED in part and we DISMISS the appeal in part.



Pickering

J.



Parraguirre

J.



Saitta

J.

cc: Chief Judge, Eighth Judicial District Court
Hon. Joseph T. Bonaventure, Senior Judge
Thomas Henry Lewis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk