

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNEST JORD GUARDADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63785

FILED

MAR 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
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 Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant filed his petition on March 22, 2013, almost eight years after issuance of the remittitur on direct appeal on June 28, 2005. 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.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).

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*Guardado v. State*, Docket No. 52639 (Order of Affirmance, February 3, 2010).

In attempt to demonstrate good cause appellant claimed that his appellate counsel did not properly raise and exhaust his claims, which affected his ability to raise those claims in federal court. That counsel for appellant did not exhaust state remedies in appellant's earlier court proceedings did not demonstrate that there was an impediment external to the defense that should excuse the procedural bars. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Further, filing an untimely, successive petition for the purpose of exhausting state remedies in order to seek federal court review does not demonstrate good cause to overcome the procedural bars. *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, and we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Brent T. Adams, District Judge
Ernest Jord Guardado
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk