

IN THE SUPREME COURT OF THE STATE OF NEVADA

THEODORE CHRISTOPHER SNURE,
Appellant,
vs.
ROBERT LEGRAND, WARDEN,
Respondent.

No. 63856

FILED

MAR 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Swaine
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Appellant filed his petition on May 4, 2012, more than five years after the order dismissing appellant's direct appeal was filed on October 16, 2006.² Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Moreover, appellant's petition was successive because he had

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 filed a direct appeal but withdrew it voluntarily. *Snure v. State*, Docket No. 47229 (Order Dismissing Appeal, October 16, 2006). This court noted in its order dismissing appeal that, because no remittitur issued from the withdrawal of appellant's direct appeal, *see* NRAP 42(b), the one-year period for filing a timely post-conviction petition under NRS 34.726(1) was to commence from the date of that order.

previously filed a post-conviction petition for a writ of habeas corpus.³ 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).

First, appellant claimed he had good cause because he failed to exhaust two of his claims for purposes of federal court review. Exhaustion of claims in order to seek federal court review does not demonstrate good cause. See *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989); see also *Edwards v. Carpenter*, 529 U.S. 446, 452-53 (2000).

Second, appellant claimed he had good cause because he can now establish that he has bipolar disorder and therefore can demonstrate his previous claim of mental incompetency. Appellant failed to demonstrate good cause for filing an untimely and successive post-conviction petition as appellant failed to demonstrate he could not have established this claim in his previous petition.⁴ See *Hathaway v. State*,

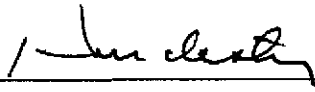
³*Snure v. Director*, Docket No. 55390 (Order of Affirmance, September 10, 2010).

⁴We note that in the presentence investigation report and the psychological and substance abuse evaluation, both prepared at the time appellant was sentenced, appellant acknowledged a diagnosis of bipolar disorder for several years. Furthermore, a competency evaluation performed during litigation of appellant's previous petition concluded that there was no evidence that medication interfered with appellant's competency to assist his attorney or understand the charges against him or prevented him from understanding the proceedings. The evaluation also concluded that appellant appeared to have weighed the choices between accepting the guilty plea and going to trial on more numerous charges, possibly lengthening a potential sentence, and that he appeared

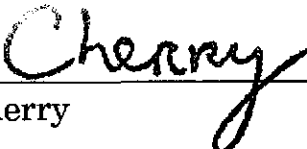
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119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). We therefore conclude that the district court did not err in dismissing appellant's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

, J.
Hardesty

, J.
Douglas

, J.
Cherry

cc: Hon. Lidia Stiglich, District Judge
Theodore Christopher Snure
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

... continued

to have understood and agreed with counsel in planning and accepting the guilty plea.