

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL KEITH LEE MCLEMORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63917

**FILED**

**MAR 12 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
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.<sup>1</sup> Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Appellant filed his petition on May 20, 2013, more than five years after entry of the judgment of conviction on August 30, 2007.<sup>2</sup> 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-

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<sup>1</sup>This 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).

<sup>2</sup>This court dismissed appellant's untimely appeal from the judgment of conviction for lack of jurisdiction. *McLemore v. State*, Docket No. 51256 (Order Dismissing Appeal, April 17, 2008).

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 previous petition.<sup>3</sup> 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 pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).

Appellant claimed he had cause for the delay because his counsel did not inform him of anything regarding a direct appeal, save for informing appellant that counsel was going to file a direct appeal. Appellant did not demonstrate cause for the delay because he failed to demonstrate that he reasonably believed an appeal was pending and that he filed his petition within a reasonable time of learning no appeal had been taken.<sup>4</sup> *Hathaway v. State*, 119 Nev. 248, 255, 71 P.3d 503, 508

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<sup>3</sup>Appellant filed a post-conviction petition for a writ of habeas corpus in the district court on August 30, 2008, but did not appeal the district court's denial of that petition.

<sup>4</sup>We note that appellant made a similar claim in his first petition for a writ of habeas corpus and, after an evidentiary hearing was held, the district court found that counsel never promised to file an appeal, appellant never asked his counsel to file an appeal, counsel explained appellant's limited right to appeal, appellant understood his limited right to appeal, appellant did not have any non-frivolous claims to raise on

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(2003). Appellant further failed to overcome the presumption of prejudice to the State. Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

*Hardesty*, J.  
Hardesty

*Douglas*, J.  
Douglas

*Cherry*, J.  
Cherry

cc: Hon. Rob Bare, District Judge  
Michael Keith Lee McLemore  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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*... continued*

appeal, and it was not reasonable for appellant to believe that his counsel had pursued an appeal on his behalf.

<sup>5</sup>We conclude that the district court did not abuse its discretion in declining to appoint counsel for the instant petition. See NRS 34.750(1).