

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN DEVON SUTTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64244

FILED

JUN 11 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 denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Appellant filed his petition on May 30, 2013, almost twelve years after issuance of the remittitur on direct appeal on July 9, 2001. *Sutton v. State*, Docket No. 34165 (Order of Affirmance, June, 11, 2001). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was an abuse of the writ as he raised claims new and different from those raised in his previous petition.² See NRS 34.810(2). Appellant's petition was procedurally barred absent a

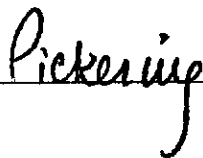
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

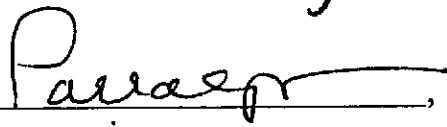
²*Sutton v. State*, Docket No. 40477 (Order of Affirmance, July 8, 2004). Appellant also litigated a motion to correct an illegal sentence and an untimely post-conviction petition for a writ of habeas corpus. *Sutton v. State*, Docket No. 59378 (Order of Affirmance, June 14, 2012); *Sutton v. State*, Docket No. 53466 (Order of Affirmance, January 12, 2010).


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. NRS 34.800(2).

Appellant did not attempt to demonstrate good cause or overcome the presumption of prejudice to the State. To the extent that appellant sought to have his petition considered as a motion to correct an illegal sentence, appellant's claim for relief fell outside the narrow scope of claims permitted in a motion to correct an illegal sentence. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, we conclude that the district court did not err in denying the petition as procedurally barred and barred by laches. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Jennifer P. Togliatti, District Judge
Kevin Devon Sutton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk