

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRES HERNANDEZ MENDOZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64355

FILED

APR 10 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.¹ Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

Appellant filed his petition on July 29, 2013, more than four years after entry of the judgment of conviction on May 27, 2009. Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Moreover, appellant's petition constituted 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 demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

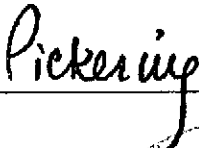
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

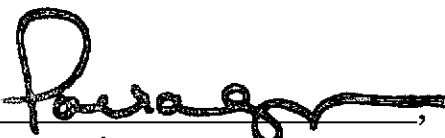
²Appellant filed a post-conviction petition for a writ of habeas corpus in the district court on May 6, 2013. Appellant did not appeal the district court's denial of that petition.


First, appellant claimed that the procedural bars did not apply because he filed his petition within one year of the filing of an amended judgment of conviction on August 6, 2012.³ Appellant's claim was without merit. Appellant did not challenge any changes made in the amended judgment of conviction; rather his claims challenged the original judgment of conviction. Therefore, the amended judgment of conviction did not provide good cause to overcome the procedural bars. *See Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

Second, appellant appeared to claim that he had good cause because his counsel failed to file a notice of appeal. Appellant did not demonstrate good cause 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. *See Hathaway v. State*, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003). Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

³The amended judgment of conviction awarded appellant an additional four days of presentence credit.

cc: Hon. Abbi Silver, District Judge
Andres Hernandez Mendoza
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk