

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64996

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; Elissa F. Cadish, Judge.

Appellant filed his petition on August 26, 2013, more than two years after issuance of the remittitur on direct appeal on December 3, 2010. *Porter v. State*, Docket No. 54866 (Order of Affirmance, November 8, 2010). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated a post-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.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally

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).

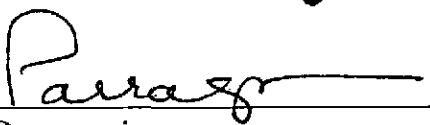
²*Porter v. State*, Docket No. 60843 (Order of Affirmance, February 13, 2013).

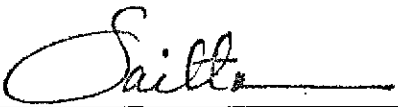
barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Appellant claimed that he had good cause because the case was difficult and complex to understand and he only learned when he looked at his paperwork that his trial counsel made an improper argument during trial. Appellant's lack of legal knowledge is not good cause. See *Phelps v. Director, Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Appellant's claim that his trial counsel made an improper argument during trial was reasonably available to be raised in a timely petition as appellant was present during trial and aware of the argument made by counsel at that time. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Because appellant failed to demonstrate good cause, we conclude that 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

cc: Hon. Elissa F. Cadish, District Judge
Justin D. Porter
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk