

IN THE SUPREME COURT OF THE STATE OF NEVADA

JIM BASS HOLDEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65331

FILED

JUN 10 2015

TRACIE K. LINDAMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

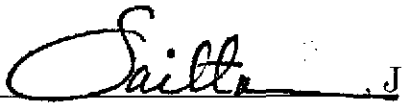
Appellant filed his petition on April 26, 2013, more than five years after this court issued its remittitur on November 13, 2007. See *Holden v. State*, Docket No. 47698 (Order of Affirmance, October 17, 2007). Thus, his petition was untimely filed. See NRS 34.726(1). Moreover, his petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus,¹ and it constituted an abuse of the writ because he raised a new claim. See NRS 34.810(2). Appellant's petition was thereby procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3). Further, because the State pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

¹*Holden v. State*, Docket No. 61352 (Order of Affirmance, May 13, 2014).

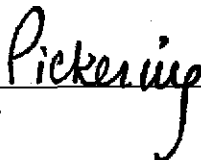
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Appellant contends that the district court erred by denying his petition because *Lafler v. Cooper*, 566 U.S. ___, 132 S. Ct. 1376 (2012), and *Missouri v. Frye*, 566 U.S. ___, 132 S. Ct. 1399 (2012), provided good cause to excuse the procedural bars. We disagree. Appellant's case was final when those cases were decided and he fails to demonstrate that their holdings apply retroactively to him. See *Clem v. State*, 119 Nev. 615, 627-28, 81 P.3d 521, 530-31 (2003). Moreover, appellant fails to demonstrate prejudice because he concedes that his ineffective-assistance claim under *Cooper* and *Frye* lacks merit and is not properly litigated in this appeal. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Saitta, J.


Gibbons, J.


Pickering, J.

cc: Hon. Carolyn Ellsworth, District Judge
Karen A. Connolly, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk