

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELDER ZACARIAS-LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66088

FILED

DEC 11 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; Jessie Elizabeth Walsh, Judge.

Appellant filed his petition on March 19, 2014, nearly 10 years after issuance of the remittitur on direct appeal on June 12, 2004. *Zacarias-Lopez v. State*, Docket No. 40116 (Order of Affirmance, May 11, 2004). Thus, appellant's petition was untimely filed.² See NRS 34.726(1).

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).

²We note that appellant was not challenging the amended judgment of conviction which was filed on March 21, 2012. Therefore, the amended judgment of conviction did not provide good cause in this case. See *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

Moreover, appellant's petition was successive because he had previously filed two post-conviction petitions 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 petitions.³ See NRS 34.810(1)(b)(2); 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(1)(b); 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).

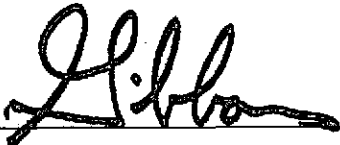
Appellant did not provide a good cause argument. To the extent that he argued that the procedural bars did not apply because he was challenging the constitutionality of the laws and the jurisdiction of the courts, appellant's argument was without merit. Appellant's claims challenged the validity of his judgment of conviction, and thus, the procedural bars do apply in this case.⁴ See NRS 34.720(1); NRS 34.724(1). Because appellant did not demonstrate good cause, the petition was procedurally barred. Further, appellant failed to overcome the

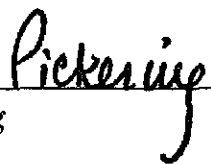
³*Zacarias-Lopez v. State*, Docket No. 44802 (Order of Affirmance, June 14, 2005); *Zacarias-Lopez v. State*, Docket No. 54427 (Order of Affirmance, September 10, 2010).

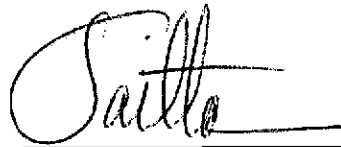
⁴Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010. We note that the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes simply reproduce those laws as classified, codified, and annotated by the Legislative Counsel. NRS 220.120.

presumption of prejudice to the State. Therefore, we conclude that the district court did not err in denying the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Pickering


_____, J.
Saitta

cc: Hon. Jessie Elizabeth Walsh, District Judge
Elder Zacarias-Lopez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk