

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC WILLIAM ZESSMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66275

FILED

DEC 1 1 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 motion to withdraw a guilty plea.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.


Because appellant's motion challenged the validity of his judgment of conviction and is not incident to the proceedings in trial court, his motion is properly construed as a post-conviction petition for a writ of habeas corpus. *See Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 628 (2014). Appellant filed his motion on June 17, 2014, more than 10 years after this court issued the remittitur from his direct appeal on October 21, 2003. *Zessman v. State*, Docket No. 41490 (Order of Affirmance, September 24, 2003). Thus, appellant's motion was untimely filed. *See* NRS 34.726(1). Appellant's motion was also successive and an abuse of the writ because he had previously litigated post-conviction petitions for 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 Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).


writ of habeas corpus.² See NRS 34.810(2)). Therefore, appellant's motion was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Even if appellant could demonstrate cause for the delay, he cannot demonstrate undue prejudice because his underlying claim—that the State never produced an arrest warrant—did not render his guilty plea invalid and did not entitle him to relief. We therefore conclude that the motion was procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Pickering


_____, J.
Saitta

cc: Hon. Michael Villani, District Judge
Eric William Zessman
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²*Zessman v. State*, Docket No. 42099 (Order of Affirmance, June 4, 2004); *Zessman v. State*, Docket No. 44453 (Order of Affirmance, June 15, 2005).