

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDDIE JAMES THOMAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66596

FILED

FEB 04 2015

TRAVIS K. LINDENMAN
CLERK OF DISTRICT COURT
BY *Angela*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Appellant filed his petition on July 8, 2014, more than six years after issuance of the remittitur on direct appeal on January 4, 2008. *Thomas v. State*, Docket No. 49486 (Order of Affirmance, December 10, 2007). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed post-conviction petitions for a writ of habeas corpus.² See NRS

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*Thomas v. State*, Docket No. 51707 (Order of Affirmance, May 13, 2009); *Thomas v. State*, Docket No. 61009 (Order of Affirmance, January 16, 2013).

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). Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition as procedurally barred for the reasons discussed below.


In his petition, appellant argued that he had good cause to excuse his procedural defects because he needed to exhaust his state remedies. Appellant's argument is without merit. The Nevada Supreme Court has held that pursuing federal relief does not provide good cause for filing a late petition. See *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).


In his reply to the State's motion to dismiss, appellant claimed that he had good cause because he did not receive a copy of his trial transcripts until 2011. Even assuming that not having the trial transcripts provided good cause to overcome the procedural bars, appellant did not file the instant petition until 2014, and therefore failed to demonstrate good cause for the entire length of his delay.³ See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506. Therefore, the

³We note that appellant also filed a petition in 2012, and failed to raise this claim as good cause to overcome the procedural bars in that petition. See *Thomas v. State*, Docket No. 61009 (Order of Affirmance, January 16, 2013).

district court did not err in denying the petition as procedurally barred,
and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Valorie J. Vega, District Judge
Eddie James Thomas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk