

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SABIN GREGORY BARENDT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67257

**FILED**

MAY 19 2015

FRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Senior Judge.

Appellant Sabin Gregory Barendt's September 26, 2014, petition was untimely because it was filed more than eleven years after the Nevada Supreme Court issued the remittitur on direct appeal on September 16, 2003.<sup>2</sup> See NRS 34.726(1). Barendt's petition was also successive because he had previously filed four post-conviction petitions

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<sup>1</sup>This appeal has been submitted for decision without oral argument, see NRAP 34(f)(3), and we conclude 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).

<sup>2</sup>See *Barendt v. State*, Docket No. 38912 (Order of Affirmance, August 19, 2003).

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for writs of habeas corpus, and his first petition was denied on the merits.<sup>3</sup> See NRS 34.810(2). Consequently, Barendt's petition was procedurally barred absent a showing of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Additionally, because the State specifically pleaded laches, Barendt was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).

In his petition and supplemental petition, Barendt suggests his claims of ineffective assistance of counsel, constitutional violations, prosecutorial misconduct, and district court error provide good cause to overcome the procedural bars and equitable tolling excused his procedural default. However, Barendt did not "show that an impediment external to the defense prevented him . . . from complying with the state procedural default rules," *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003), and the Nevada Supreme Court has expressly "rejected equitable tolling of the one-year filing period set forth in NRS 34.726," *Brown v. State*, 130 Nev. \_\_\_, \_\_\_, 331 P.3d 867, 874 (2014).


Barendt failed to demonstrate good cause to overcome his procedural default, and he made no attempt to respond to the State's plea


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<sup>3</sup>See *Barendt v. State*, Docket No. 63691 (Order Dismissing Appeal, September 11, 2013); *Barendt v. State*, Docket No. 58412 (Order of Affirmance, September 15, 2011); *Barendt v. State*, Docket No. 43665 (Order of Affirmance, April 4, 2005). Barendt did not appeal from the denial of his third habeas petition.

of laches. Therefore, the district court did not err by denying Barendt's petition, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Chief Judge, Eighth Judicial District Court  
Hon. Kathy A. Hardcastle, Senior Judge  
Sabin Gregory Barendt  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk