

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NANCY E. NASH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67351

FILED

JUN 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an 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; Douglas Smith, Judge.

Appellant Nancy E. Nash filed her petition on August 11, 2014, more than six years after entry of the judgment of conviction on January 18, 2008.² Thus, Nash's petition was untimely filed. See NRS 34.726(1). Moreover, Nash's petition constituted an abuse of the writ as she raised claims new and different from those raised in her previous petition.³ See NRS 34.810(2). Nash's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS

¹This appeal has been submitted for decision without oral argument, 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).

²No direct appeal was taken.

³Nash did not appeal the district court's denial of her January 20, 2012, petition.

34.726(1); NRS 34.810(3). Moreover, because the State specifically pleaded laches, Nash was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).

First, Nash claimed she had good cause because she lacked knowledge of legal issues. This claim failed to demonstrate there was an impediment external to the defense that prevented Nash from complying with the procedural bars. See *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner's claim of organic brain damage, borderline mental retardation and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post-conviction petition).

Second, Nash appeared to claim she had good cause due to ineffective assistance of post-conviction counsel. Ineffective assistance of post-conviction counsel does not constitute good cause in the instant case because the appointment of counsel in the prior post-conviction proceedings was not statutorily or constitutionally required. See *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996); see also *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871 (2014) (explaining that post-conviction counsel's performance does not constitute good cause to excuse the procedural bars unless the appointment of post-conviction counsel was mandated by statute).

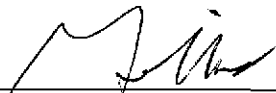
Third, Nash claimed that she would suffer from a fundamental miscarriage of justice if her petition was procedurally barred because she is actually innocent. As Nash pleaded guilty, she must demonstrate not only that she is factually innocent of the charge to which she pleaded guilty, but that she is factually innocent of any more serious charges


forgone in the plea bargaining process. *See Bousley v. United States*, 523 U.S. 614, 623-24 (1998). Nash did not address actual innocence regarding the 27 felony charges relinquished by the State during negotiations. In addition, Nash did not demonstrate actual innocence because she failed to show that "it is more likely than not that no reasonable juror would have convicted [her] in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).


Nash also failed to overcome the presumption of prejudice to the State. Therefore, the district court did not err in denying the petition as procedurally barred.

Finally, Nash claimed that she does not receive proper medical care and she has safety concerns from other inmates due to her age and health issues. These are challenges to Nash's conditions of confinement and a post-conviction petition for a writ of habeas corpus is not the proper vehicle to raise such challenges. *See Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). Therefore, Nash was not entitled to relief for these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Nancy E. Nash
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk