

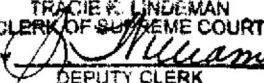
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VICTOR D. HOLMES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67362

**FILED**

JUN 17 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
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.<sup>1</sup> Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Appellant Victor Holmes filed his petition on December 12, 2014, more than ten years after issuance of the remittitur on direct appeal on February 3, 2004. *Holmes v. State*, Docket No. 41484 (Order Affirming but Remanding for Entry of a Corrected Judgment of Conviction, January 9, 2004). Thus, Holmes's petition was untimely filed. See NRS 34.726(1). Moreover, Holmes's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it

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<sup>1</sup>This 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 *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Holmes'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, Holmes was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).


Holmes asserted he had good cause because the district court lacked jurisdiction to impose the habitual criminal enhancement. Holmes failed to demonstrate good cause because this claim was reasonably available to be raised in a timely petition. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). In addition, Holmes has already claimed the district court lacked jurisdiction to adjudicate him as a habitual criminal and the Nevada Supreme Court concluded that Holmes's sentence was legal. See *Holmes v. State*, Docket No. 52003 (Order of Affirmance, November 7, 2008). The doctrine of the law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and precisely focused argument." *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). In addition, Holmes failed to overcome the

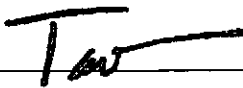
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<sup>2</sup>*Holmes v. State*, Docket No. 50379 (Order of Affirmance, April 10, 2008).

presumption of prejudice to the State. Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Jennifer P. Togliatti, District Judge  
Victor D. Holmes  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk