

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN JAMES NASBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67580

FILED

SEP 11 2015

TRACIE K. LINDBMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying appellant Brendan James Nasby's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

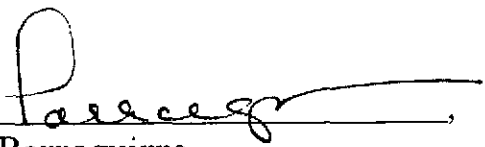
Appellant filed his petition on December 9, 2014, more than 13 years after remittitur issued from his direct appeal. *Nasby v. State*, Docket No. 35319 (Order of Affirmance, February 7, 2001). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was also successive because he had previously filed other post-conviction petitions,¹ and it constituted an abuse of the writ to the extent he raised claims new and different from those raised in his previous petitions. See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was thereby procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

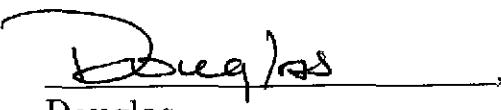
¹*Nasby v. State*, Docket No. 58579 (Order of Affirmance, February 8, 2012); *Nasby v. State*, Docket No. 47130 (Order of Affirmance, June 18, 2007).

Further, because the State pleaded laches, appellant was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).

Appellant asserted that he had good cause to excuse the procedural defects because (1) his previous post-conviction counsel were ineffective, (2) he recently located evidence supporting a prior ineffective-assistance claim, and (3) the district court order denying his first petition was void. To establish good cause “a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules.” *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Appellant’s reasons for the delay in filing his petition do not constitute good cause. *See Brown v. McDaniel*, 130., Nev. Adv. Op. 60, 331 P.3d 867, 870 (2014). Appellant also failed to overcome the presumption of prejudice to the State and therefore his petition is procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


Parraguirre, J.


Douglas, J.

²This 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).

CHERRY, J., concurring:

Although I would extend the equitable rule recognized in *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), to this case because appellant was convicted of murder and is facing a severe sentence, see *Brown v. McDaniel*, 130 Nev., Adv. Op. 60, 331 P.3d 867 (2014) (Cherry, J., dissenting), I concur in the judgment on appeal.

Cherry *Cherry* J.

cc: Hon. William D. Kephart, District Judge
Brendan James Nasby
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk