

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VICTOR TAGLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67941

FILED

SEP 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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 and denying a motion to modify sentence.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Post-Conviction Petition

Appellant Victor Tagle filed his petition on January 28, 2015, three years after entry of the judgment of conviction on January 19, 2012.² Thus, Tagle's petition was untimely filed. *See* NRS 34.726(1). Moreover, Tagle's petition was successive because he had previously filed two post-

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. Tagle's petition was also filed nearly three years after the district court entered an amended judgment of conviction on March 28, 2012, and a second amended judgment of conviction on April 27, 2012.

conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.³ See NRS 34.810(2). Tagle's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

To overcome the procedural bars, Tagle appeared to allege he had good cause because of ineffective assistance of counsel and malfeasance by the State. These claims do not provide good cause because they were reasonably available to be raised in a timely post-conviction petition for a writ of habeas corpus and the ineffective-assistance-of-counsel claims are themselves procedurally barred and cannot establish good cause. *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Therefore, the district court did not err in dismissing the petition as procedurally barred.

Motion to modify


In his motion to modify filed on January 28, 2015, Tagle claimed he was being held illegally because he was convicted based on fabricated evidence. Tagle's claim fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of the claim raised in the motion, we

³*Tagle v. State*, Docket No. 62145 (Order of Affirmance, July 23, 2013); *Tagle v. State*, Docket No. 67179 (Order of Affirmance, April 14, 2015).

conclude the district court did not err in denying the motion.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Valerie Adair, District Judge
Victor Tagle
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴To the extent Tagle challenges the denial of his speedy trial motion and motion to change courtrooms, we conclude the district court did not abuse its discretion by denying those motions.

⁵We have reviewed all documents Tagle has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Tagle has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.