

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES KEVIN MACK, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67825

FILED

OCT 20 2015

FRANCIE K. TINDEMAN
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.¹ Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Appellant James Mack filed his petition on September 26, 2014, more than 9 years after issuance of the remittitur on direct appeal on May 17, 2005.² Thus, Mack's petition was untimely filed. See NRS 34.726(1). Moreover, Mack's petition was successive because he had previously filed two post-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 petitions.³ 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).


²*Mack v. State*, Docket No. 42031 (Order of Affirmance, April 21, 2005).


³*Mack v. State*, Docket No. 45290 (Order Dismissing Appeal, August 23, 2005); *Mack v. State*, Docket No. 47684 (Order of Affirmance and Remand for Correction of Judgment of Conviction, January 8, 2009).

34.810(1)(b)(2); NRS 34.810(2). Mack'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).

In an attempt to overcome the procedural bars, Mack argues his claim regarding the Nevada Revised Statutes was not reasonably available until the State conceded in 2014 that the Nevada Revised Statutes do not have enacting clauses. Mack fails to demonstrate he had cause for the delay because this claim was reasonably available to be raised in a timely filed petition. See *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, and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

⁴We have reviewed all documents Mack has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Mack 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.

cc: Hon. Scott N. Freeman, District Judge
James Kevin Mack, Sr.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk