

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN DEVON SUTTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67584

FILED

DEC 18 2015

TRAIHE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying appellant's postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.¹

Appellant filed his petition on November 24, 2014, more than 13 years after remittitur issued from his direct appeal on July 9, 2001. *Sutton v. State*, Docket No. 34165 (Order of Affirmance, June 11, 2001). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was also successive because he had previously sought postconviction relief,² and it constituted an abuse of the writ to the extent it raised new and different claims. See NRS. 34.810(2). Appellant's petition was therefore procedurally barred absent a demonstration of good

¹This 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).

²*Sutton v. State*, Docket No. 40474 (Order of Affirmance, July 8, 2004); *Sutton v. State*, Docket No. 53466 (Order of Affirmance, January 12, 2010); *Sutton v. State*, Docket No. 64244 (Order of Affirmance, June 11, 2014).


cause and prejudice. See NRS 34.726(1). Moreover, appellant pleaded guilty, and therefore his petition was subject to the procedural bar set forth in NRS 34.810(1)(a). Further, because the State pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(1), (2).

Appellant failed to demonstrate good cause and prejudice to overcome the procedural default, see *Brown v. McDaniel*, 130 Nev. Adv. Op. 60, 331 P.3d 867, 870 (2014), or that the failure to consider his claims amounts to a fundamental miscarriage of justice, *Mitchell v. State*, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006). Appellant also failed to overcome the presumption of prejudice to the State. Accordingly, we conclude that the district court did not err in denying the petition as procedurally barred, and we

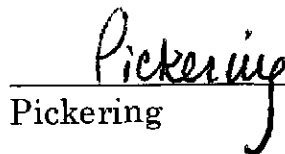
ORDER the judgment of the district court AFFIRMED.

 _____, J.

Saitta

 _____, J.

Gibbons

 _____, J.

Pickering

cc: Hon. Susan Johnson, District Judge
Kevin Devon Sutton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk