

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THEODORE STEVENS, A/K/A
MICHAEL SABATINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72466

FILED

OCT 12 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Theodore Stevens appeals from an order of the district court denying his December 7, 2016, postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Stevens filed his petition more than seven years after issuance of the remittitur on direct appeal on May 5, 2009. *See Stevens v. State*, Docket No. 50190 (Order of Affirmance, April 8, 2009). Stevens' petition was therefore untimely filed. *See* NRS 34.726(1). His petition was also successive because he had previously filed two postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ insofar as he raised claims new and different from those raised in his previous

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

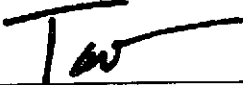
petitions.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Stevens' petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Further, because the State specifically pleaded laches, Stevens was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

Stevens argues the district court erred by denying his petition as procedurally barred without first conducting an evidentiary hearing to consider his new evidence. To the extent Stevens argued the report of Dr. Richard Ofshe constituted good cause to overcome the procedural bars, his claim lacked merit. To constitute good cause, Stevens had to demonstrate his claim was raised within a reasonable time after discovering Dr. Ofshe's report. Cf. *Hathaway v. State*, 119 Nev. 248, 254-55, 71 P.3d 503, 507-08 (2003). Stevens did not state when he discovered the report and provided only an excerpt that does not indicate when the report was written, but the report was stamped as received on August 27, 2012. Stevens did not file his petition for another four years, which was not a reasonable time frame. Accordingly, Stevens failed to demonstrate Dr. Ofshe's report constituted good cause to overcome the procedural bars. Stevens also failed to overcome the rebuttable presumption of prejudice to the State.

²*Stevens v. State*, Docket No. 57837 (Order of Affirmance, July 13, 2011). No appeal was taken from the denial of his November 22, 2011, postconviction petition for a writ of habeas corpus.

Stevens failed to allege specific factual allegations that, if true and not repelled by the record, would have entitled him to have his procedurally barred claims heard on the merits. *See id.* at 255, 71 P.3d at 508. We therefore conclude the district court did not err in denying his petition without first conducting an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Richard Scotti, District Judge
Theodore Stevens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We conclude the district court did not err by not appointing postconviction counsel to represent Stevens in this matter. *See* NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).

The Honorable Abbi Silver did not participate in the decision in this matter.