

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID LEVOYD REED,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75732

FILED

OCT 25 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

David Levoyd Reed appeals from a district court order denying a “writ of habeas corpus motion to correct illegal sentence or modify sentence” filed on February 16, 2018.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Reed claims the district court erred by denying his motion. To the extent his motion can be construed as a postconviction petition for a writ of habeas corpus, it was untimely because it was filed more than 13 years after the judgment of conviction was entered on October 6, 2004,² and its sole claim fell outside the narrow scope of claims permissible in a petition challenging a judgment of conviction based on a guilty plea. *See* NRS 34.726(1); NRS 34.810(1)(a). Therefore, Reed’s petition was procedurally barred absent a demonstration of good cause and actual prejudice or that

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

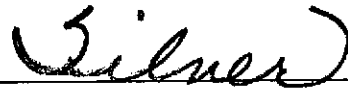
²Reed voluntarily withdrew his direct appeal. *Reed v. State*, Docket No. 44242 (Order Dismissing Appeal, February 28, 2005). Therefore, the proper date for measuring the timeliness of his habeas petition is the date the judgment of conviction was entered. *See Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

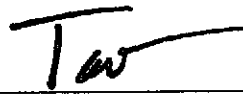
failure to consider his claims would result in a fundamental miscarriage of justice. See NRS 34.726(1); NRS 34.810(3); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Moreover, because the State specifically pleaded laches, Reed was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).


Reed claimed he was entitled to retroactive application of NRS 193.165's amelioratory amendments, and he argued that he had good cause to overcome the procedural bars because the basis for his claim was not available before NRS 193.165 was amended. However, Reed failed to raise this claim within a reasonable time after the statute was amended in 2007. See 2007 Nev. Stat., ch. 525, § 22, at 3196; *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (explaining good cause may be demonstrated when the factual basis for a claim was not reasonably available to be raised in a timely petition and the good cause claim itself is not procedurally defaulted). And we conclude he has failed to demonstrate good cause or a fundamental miscarriage of justice sufficient to excuse the procedural bars to his petition and the State's specific plea of laches. See NRS 34.726(1); NRS 34.800(1); NRS 34.810(3).

To the extent Reed's motion can be construed as a motion to correct an illegal sentence or modify a sentence, he did not allege the district court was without jurisdiction to impose the sentence, the sentence exceeds the statutory maximum, or the sentence was based on mistaken assumptions about his criminal record which worked to his extreme detriment. Therefore, we conclude his claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence or modify a sentence, see *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996), and the district court did not err by denying his motion.

Having concluded Reed is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
David Levoyd Reed
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk