

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRETT DAGAN JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75120

FILED

JUL 31 2018

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

ORDER OF AFFIRMANCE

Brett Dagan Jones appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Jones filed his petition on September 12, 2017, more than 14 years after entry of the judgment of conviction on January 24, 2003.² Thus, Jones' petition was untimely filed. *See* NRS 34.726(1). Moreover, Jones' petition constituted an abuse of the writ as he raised a claim new and different from those raised in his previous petitions.³ *See* NRS 34.810(2). Jones' petition was procedurally barred absent a demonstration of good

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

²No direct appeal was taken.

³*Jones v. State*, Docket No. 54312 (Order of Affirmance, May 10, 2010); *Jones v. State*, Docket No. 41510 (Order of Affirmance, March 18, 2004).

cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically pleaded laches, Jones was required to overcome the rebuttable presumption of prejudice. *See* NRS 34.800(2).


Jones argued he had good cause because his trial-level counsel failed to pursue a direct appeal. Jones' claim failed to demonstrate good cause. Jones asserted he realized no direct appeal had been filed following the denial of his first petition. The Nevada Supreme Court affirmed the denial of Jones' first petition in 2004, *Jones v. State*, Docket No. 41510 (Order of Affirmance, March 18, 2004), but Jones waited approximately 13 years to raise an appeal-deprivation claim. Given the lengthy delay, Jones failed to demonstrate he raised this claim within a reasonable time after learning that his counsel had not pursued a direct appeal. *See Hathaway v. State*, 119 Nev. 248, 254-55, 71 P.3d 503, 507-08 (2003).


In addition, Jones failed to overcome the rebuttable presumption of prejudice to the State. Therefore, we conclude the district court did not err by denying the petition as procedurally barred.

Next, Jones argues the district court erred by declining to conduct an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations not belied by the record and, if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the

procedural bars). The district court concluded Jones' claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

, C.J.
Silver

, J.
Tao

, J.
Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Brett Dagan Jones
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk