

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRANCE L. LAVOLL, A/K/A  
TERRANCE L. LOVOLL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76043-COA

FILED

MAY 15 2019

EDWARD A. GROWN  
CLERK OF THE COURT  
BY: *[Signature]*  
SHIRLEY L. GROWN

*ORDER OF AFFIRMANCE*

Terrance L. Lavoll appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 18, 2018.<sup>1</sup> Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Lavoll filed his petition nearly 18 years after issuance of the remittitur on direct appeal on May 23, 2000. *See Lavoll v. State*, Docket No. 31779 (Order Dismissing Appeal, April 27, 2000). Thus, Lavoll's petition was untimely filed. *See* NRS 34.726(1). Moreover, Lavoll's petition was successive because he had previously filed a postconviction petition 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 petition.<sup>2</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Lavoll's petition was procedurally

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

<sup>2</sup>*See Lavoll v. State*, Docket No. 48899 (Order of Affirmance, November 16, 2007).

barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

First, Lavoll claims the district court erred by denying his good cause claim that his judgment of conviction was not a final judgment because it failed to specify a minimum term that must be served. Lavoll claimed that because the judgment of conviction was never final, the one-year time period for filing a postconviction petition never began to run. Lavoll failed to demonstrate good cause. Lavoll's judgment of conviction contained all of the elements required by NRS 176.105 as it existed at the time of his crime and sentencing. *See* 1993 Nev. Stat., ch. 46, § 1, at 78. Therefore, the judgment of conviction was a final judgment, and the district court did not err by denying this claim.<sup>3</sup>


Second, Lavoll claims the district court erred by denying his good cause claim that because the district court failed to address all of the issues raised in his first petition, the district court's order denying this first petition was not a final order. He claimed this meant his first petition was still pending and the current petition relates back to that petition. Lavoll failed to demonstrate good cause. While the district court's order did not address all of the claims raised in Lavoll's petition individually, the district court's order denied the petition in its entirety. Therefore, the district court's order denying Lavoll's first petition was a final order. Accordingly, we conclude the district court did not err by denying this claim.


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<sup>3</sup>Lavoll claims for the first time on appeal that he did not raise this claim earlier because he only recently learned he was eligible for parole. This claim was not raised in his petition below, and we decline to consider it on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

The district court also denied the petition because the State argued Lavoll's petition was barred by laches. Because laches is a rebuttable presumption and must be specifically pleaded by the State, see NRS 34.800(2), the district court should have given Lavoll an opportunity to respond to the State's argument.<sup>4</sup> However, the district court orally denied Lavoll's petition only ten days after the State filed its response alleging laches. Therefore, we conclude the district court erred by denying the petition based on laches. However, because the district court otherwise correctly denied the petition as procedurally barred under NRS 34.810, we conclude the district court did not err by denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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<sup>4</sup>Lavoll did not have a right to otherwise respond to the State's response because the State did not file a motion to dismiss Lavoll's petition. See NRS 34.750(4), (5).

<sup>5</sup>We also conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017).

cc: Chief Judge, Eighth Judicial District Court  
Terrance L. Lavoll  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk