

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN LARUE SCOTT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68693

FILED

MAY 17 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Appellant Steven Scott claims the district court erred in denying his January 26, 2016, petition as procedurally barred for the following reasons:

First, Scott argues the district court erred in finding he was not entitled to equitable tolling of the statutory period for filing a habeas petition. We conclude the district court did not err because the Nevada Supreme Court has “rejected equitable tolling of the one-year filing period set forth in NRS 34.726 because the statute’s plain language requires a petitioner to demonstrate a legal excuse for any delay in filing a petition.” *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 874 (2014).


Second, Scott argues the district court erred in rejecting his claims that the lack of postconviction counsel, his mental health issues, and the district court’s vexatious-litigant determination established legal excuses for the petition’s procedural defects. We conclude the district court did not err because Scott was not entitled to postconviction counsel,

see NRS 34.750(1); *McKague v. Warden*, 112 Nev. 156, 164, 912 P.2d 255, 258 (1996), the Nevada Supreme Court has held mental health issues do not constitute good cause to excuse a petition's procedural defects, *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), and the vexatious-litigant determination was made ten years after the statutory period for filing a habeas petition had run, see *Scott v. Eighth Judicial Dist. Court*, Docket No. 68393 (Order Granting Petition, December 18, 2015) ("Scott was determined to be a vexatious litigant in 2014."); *Scott v. State*, Docket No. 39654 (Order Affirming in part, Reversing in part, and Remanding, April 6, 2004).

Third, Scott argues the district court erred by applying laches because the State failed to explain how it was prejudiced by the untimely petition. We conclude the district court did not err in this regard. Scott, and not the State, had the burden of overcoming the rebuttable presumption of prejudice to the State, which arose when Scott filed his petition more than five years after the Nevada Supreme Court entered its decision on direct appeal of the judgment of conviction. See NRS 34.800(2). Scott failed to rebut this presumption.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Susan Johnson, District Judge
Bush Law Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk