

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HUBERT WILBER DRAW, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72238

FILED

OCT 12 2017

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

ORDER OF AFFIRMANCE

Hubert Wilber Draw, Jr, appeals from an order of the district court denying his July 1, 2016, postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Draw filed his petition nearly six years after issuance of the remittitur on direct appeal on August 16, 2010. *See Draw v. State*, Docket No. 50560 (Order of Affirmance, July 22, 2010). Draw's petition was therefore untimely filed. *See* NRS 34.726(1). His petition was also successive and an abuse of the writ. *See* NRS 34.810(1)(b)(2); NRS 34.810(2); *Draw, Jr. v. State*, Docket No. 64390 (Order of Affirmance, February 12, 2015). Draw's 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, Draw was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

Draw claimed he had good cause to excuse the procedural bars because he needed to exhaust his claims in state court. Filing a procedurally barred petition for exhaustion purposes is not good cause because Draw's claims were reasonably available to be raised in a timely petition. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); see also *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), *abrogated by statute on other grounds as recognized by State v. Huebler*, 128 Nev. 192, 197-98 n.2, 275 P.3d 91, 95 n.2 (2012). Further, Draw failed to overcome the presumption of prejudice to the State. Accordingly, we conclude the district court did not err in denying Draw's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.



Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. Elissa F. Cadish, District Judge
Hubert Wilber Draw, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk