

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDRES HERNANDEZ MENDOZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69484

FILED

AUG 17 2016

TRACIE K. INDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus and an amended postconviction petition. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.¹

Andres Hernandez Mendoza filed his petition on September 8, 2015, and filed an amended petition on September 21, 2015, more than six years after entry of the judgment of conviction on May 27, 2009. Thus, Mendoza's petition was untimely filed. *See* NRS 34.726(1). Moreover, Mendoza's petition was successive because he had previously filed postconviction petitions 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 petitions.² *See* NRS 34.810(2). Mendoza's petition was

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).

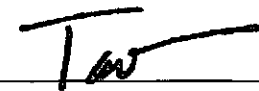
²*See Mendoza v. State*, Docket No. 64355 (Order of Affirmance, April 10, 2014). Mendoza also filed a postconviction petition for a writ of habeas corpus in the district court on May 6, 2013. Mendoza did not appeal the denial of that petition.

procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically pleaded laches, Mendoza was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

In an attempt to demonstrate good cause to overcome the procedural bars, Mendoza asserted that his guilty plea constituted a manifest injustice and he received ineffective assistance of counsel. The district court determined Mendoza failed to establish good cause because he failed to demonstrate that an impediment external to the defense prevented him from raising his claims in a timely petition. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 505-06 (2003). The district court further found Mendoza failed to overcome the rebuttable presumption of prejudice to the State. We conclude the district court did not err by denying the petition and amended petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao

cc: Hon. Richard Scotti, District Judge
Andres Hernandez Mendoza
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk