

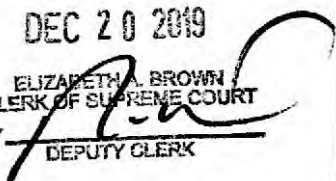
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY JAMES BENNETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77521-COA

FILED

DEC 20 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gregory James Bennett appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on June 18, 2018. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Bennett's petition was untimely because it was filed more than eleven years after the remittitur on direct appeal was issued on October 10, 2006,¹ *see* NRS 34.726(1), and it was successive because he had previously filed three postconviction petitions for a writ of habeas corpus and the first one was decided on the merits,² *see* NRS 34.810(2). Therefore, his petition was 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, he was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

¹*See Bennett v. State*, Docket Nos. 46913 & 46914 (Order of Affirmance, September 12, 2006).


²*See Bennett v. State*, Docket No. 66701-COA (Order of Affirmance, February 24, 2015); *Bennett v. Warden*, Docket No. 62131 (Order of Affirmance, September 17, 2014); *Bennett v. State*, Docket No. 53993 (Order of Affirmance, April 7, 2010).

The district court made the following findings: Bennett failed to demonstrate good cause because he did not explain why his first two grounds for relief were not previously available and could not have been raised in an earlier postconviction habeas petition. Bennett's third ground for relief, that the district court seized his case from the justice court without proper jurisdiction, was unsuccessfully raised in one of his previous petitions. And Bennett's "vague allusion to 'newly discovered evidence' [does] not constitute a demonstration of good cause."

The district court's factual findings are supported by the record and are not clearly wrong. We note that Bennett did not expressly address good cause and actual prejudice in his petition. He also did not demonstrate that the newly discovered evidence was exculpatory or explain when it was discovered, and he did not make any showing to overcome the presumption of prejudice to the State. Accordingly, we conclude the district court did not err by dismissing Bennett's procedurally barred petition, and we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³We have reviewed all documents Bennett has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Bennett has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

cc: Hon. Jerome M. Polaha, District Judge
Gregory James Bennett
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk