

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH LEE WEBSTER,
Appellant,
vs.
THE STATE OF NEVADA; AND JERRY
HOWELL, WARDEN,
Respondents.

No. 81003-COA

FILED

DEC 11 2020

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

ORDER OF AFFIRMANCE

Joseph Lee Webster appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 9, 2019. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Webster filed his petition more than 11 years after entry of the judgment of conviction on June 13, 2008.¹ Thus, Webster's petition was untimely filed. See NRS 34.726(1). Webster's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See *id.* Further, because the State specifically pleaded

¹Webster's direct appeal was dismissed for lack of jurisdiction because the notice of appeal was untimely filed. *Webster v. State*, Docket No. 67807 (Order Dismissing Appeal, May 18, 2015). Accordingly, the proper date to measure the timeliness is the entry of the judgment of conviction. See *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

laches, Webster was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

First, Webster claimed he could demonstrate good cause to overcome the procedural bars because his counsel failed to file a direct appeal on his behalf. Webster raised this good cause claim in a previous petition, and this court rejected it. *See Webster v. State*, Docket No. 69397-COA (Order of Affirmance, September 20, 2016). Accordingly, this claim was barred by the doctrine of the law of the case, which cannot be avoided by a more detailed and precisely focused argument. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

Webster also claimed he could demonstrate good cause to overcome the procedural bars because his appeal deprivation claim and other ineffective assistance of counsel claims implicate the subject matter jurisdiction of the courts. Webster's claims did not implicate the courts' subject matter jurisdiction. *See* Nev. Const. art. 6, § 6(1); NRS 171.010; *Landreth v. Malik*, 127 Nev. 175, 183, 251 P.3d 163, 168 (2011) ("Subject matter jurisdiction is the court's authority to render a judgment in a particular category of case." (internal quotation marks omitted)).


Further, we conclude the district court did not err by finding that Webster failed to rebut the presumption of prejudice to the State. Therefore, we conclude the district court did not err by denying the petition as procedurally time barred and barred by laches.

Finally, Webster requested the appointment of postconviction counsel. The appointment of counsel in this matter was discretionary, and the district court found that discovery with the aid of counsel was not

necessary. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). The record supports the decision of the district court, and we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Douglas W. Herndon, District Judge
Joseph Lee Webster
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk