

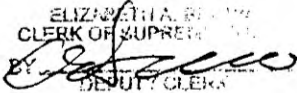
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN D. PORTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85063-COA

FILED

OCT 27 2022

ELIZABETH A. BERRY
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Justin D. Porter appeals from an order of the district court denying substantively identical postconviction petitions for a writ of habeas corpus filed on November 23, 2021, and April 29, 2022. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Porter filed his petitions more than 10 years after issuance of the remittitur on direct appeal on December 3, 2010. *See Porter v. State*, No. 54866, 2010 WL 4537736 (Nev. Nov. 8, 2010) (Order of Affirmance). Thus, Porter's petitions were untimely filed. *See* NRS 34.726(1). Moreover, Porter's petitions constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.¹ *See* NRS 34.810(l)(b)(2); NRS 34.810(2). Porter's petitions were 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

¹*See Porter v. State*, No. 80738-COA, 2021 WL 3260053 (Nev. Ct. App. July 29, 2021) (Order of Affirmance); *Porter v. State*, No. 70206-COA, 2016 WL 4423287 (Nev. Ct. App. Aug. 17, 2016) (Order of Affirmance); *Porter v. State*, No. 64996, 2014 WL 2625304 (Nev. June 11, 2014) (Order of Affirmance); *Porter v. State*, No. 60843, 2013 WL 593785 (Nev. Feb. 13, 2013) (Order of Affirmance).

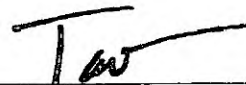
specifically pleaded laches, Porter was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

Porter argues the district court erred by denying his good cause claim that he has newly discovered evidence supporting his claims that the State and counsel committed errors arising from his warrantless arrest. The allegedly newly discovered evidence is contained in the trial record, and Porter has previously raised claims alleging his arrest was warrantless. *See Porter*, No. 80738-COA, 2021 WL 3260053. Accordingly, Porter failed to demonstrate an impediment external to the defense or that his claims were not reasonably available to be filed in a timely filed petition. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Thus, Porter does not demonstrate the district court erred by denying this good cause claim.

In addition, Porter fails to demonstrate the district court erred by concluding he failed to overcome the presumption of prejudice to the State. Therefore, Porter fails to demonstrate the district court erred by denying his petitions as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 17
Justin D. Porter
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk