

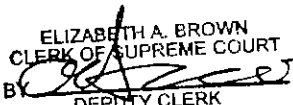
IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JAMES BERRY, SR.,
Appellant,
vs.
NETHANJAH BREITENBACH,
WARDEN; AND THE STATE OF
NEVADA,
Respondents.

No. 87733

FILED

FEB 14 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge. Appellant William James Berry, Sr. argues that the district court erred in denying the petition as procedurally barred. We affirm.¹

Berry filed the petition 35 years after remittitur issued on direct appeal from the judgment of conviction. *Berry v. State*, No. 18098, 1988 WL 232880 (Nev. June 23, 1988) (Order Dismissing Appeal). Thus, the petition was untimely filed. See NRS 34.726(1). The petition was also successive. see NRS 34.810(1)(b), (3), because Berry had previously litigated several matters characterized as postconviction petitions for a writ of habeas corpus, *Berry v. State*, No. 72277-COA, 2017 WL 6547664 (Nev. Ct. App. Dec. 14, 2017) (Order of Affirmance); *Berry v. State*, No. 69186-COA, 2016 WL 3585671 (Nev. Ct. App. June 21, 2016) (Order of Affirmance); *Berry v. State*, No. 52699, 2008 WL 6113171 (Nev. Nov. 21, 2008) (Order Denying Petition); *Berry v. State*, No. 49014, 2007 WL 6608930 (Nev. Aug.

¹Having considered the pro se brief and supplemental authorities filed by Berry, we conclude that a response is not necessary. NRAP 46A(c).

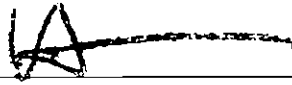
2, 2007) (Order of Affirmance). Accordingly, the petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b), (4). Good cause may be demonstrated by a showing that the factual or legal basis for a claim was not reasonably available to be raised in a timely petition. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Further, as the State specifically pleaded laches, Berry was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).

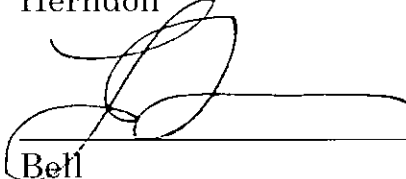
Berry argues that the trial court lost jurisdiction after the original district judge ordered a competency evaluation but a successor judge (who replaced the original judge) conducted the trial without conducting the competency evaluation. Berry argues that jurisdiction may be challenged at any time and thus impliedly argues that this jurisdiction claim evades the procedural bars. Berry's jurisdictional claim challenges the validity of the judgment of conviction and, therefore, was subject to the procedural bars. As the alleged jurisdiction claim was reasonably available to be timely raised, Berry has failed to show that the procedural bars do not apply. Even if a jurisdiction challenge were not subject to the procedural bars, the claim raised by Berry does not go to the trial court's jurisdiction. Failing to conduct a competency hearing did not divest the trial court of jurisdiction, given that the trial court had jurisdiction over the felony charge. *See Zalyaul v. State*, 138 Nev. 760, 761, 520 P.3d 345, 347 (2022) ("Subject matter jurisdiction is the court's authority to render a judgment in a particular category of case." (internal quotation marks omitted)); *Kimball v. State*, 100 Nev. 190, 678 P.2d 675 (1984) (observing that the district court has original jurisdiction over felonies and gross misdemeanors).

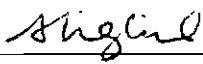
Further, Berry has failed to demonstrate a fundamental miscarriage of justice to overcome the presumption of prejudice to the State based on laches. *See Little v. Warden*, 117 Nev. 845, 853, 34 P.3d 540, 545 (2001). We conclude that the district court correctly applied the mandatory procedural bars and did not err in determining the petition was barred by laches. *See State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 233, 112 P.3d 1070, 1074, 1075 (2005).

Having considered Berry's contentions and concluded that relief is not warranted, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Herndon


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Mary Kay Holthus, District Judge
William James Berry, Sr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk