

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY HOBSON,  
Appellant,  
vs.  
WARDEN, ELY STATE PRISON, E.K.  
MCDANIEL,  
Respondent.

No. 38495

FILED

MAY 23 2002

JANEITE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On June 24, 1983, the district court convicted appellant, pursuant to a bench trial, of being an ex-felon in possession of a concealable firearm. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of life without the possibility of parole in the Nevada State Prison to be served consecutively to appellant's other prison terms. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on September 11, 1984.

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<sup>1</sup>Hobson v. State, Docket No. 15162 (Order Dismissing Appeal, August 23, 1984).

On February 20, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that appellant's petition was untimely filed. Moreover, the State specifically pleaded laches. Appellant filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 20, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than seventeen years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>3</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>4</sup>

In an attempt to excuse his procedural defects, appellant claimed that the untimely filing of his petition should be excused because until the ruling in Florida v. J.L.<sup>5</sup> was rendered he could not point to any

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<sup>2</sup>See NRS 34.726(1).

<sup>3</sup>See id.

<sup>4</sup>See NRS 34.800(2).

<sup>5</sup>529 U.S. 266 (2000) (holding that an anonymous tip lacking indicia of reliability does not justify a stop and frisk whenever and however it alleges the illegal possession of a firearm).

definitive case law that showed that his conviction was unconstitutional. Appellant essentially asked the district court to apply the ruling in J.L. retroactively.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant failed to demonstrate good cause and prejudice to excuse the untimely filing of his petition and failed to overcome the presumption of prejudice to the State.<sup>6</sup> Further, the holding in J.L. did not announce a new rule but instead extended the principles of the stop and frisk jurisprudence embodied in Terry v. Ohio, 392 U.S. 1 (1968), and Adams v. Williams, 407 U.S. 143 (1972).<sup>7</sup> Appellant raised this claim in his direct appeal and this court relied on Terry and Adams in denying appellant's direct appeal. Therefore, this claim is barred by the doctrine of law of the case.<sup>8</sup> Finally, appellant failed to demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice.<sup>9</sup>

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<sup>6</sup>See U.S. v. Hopkins, 268 F.3d 222 (2001); see also Caspari v. Bohlem, 510 U.S. 383 (1994); Teague v. Lane, 489 U.S. 288 (1989).

<sup>7</sup>See Hopkins, 268 F.3d 222.

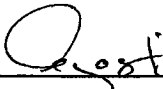
<sup>8</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).


<sup>9</sup>See Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>11</sup>

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Charles M. McGee, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Gary Hobson  
Washoe District Court Clerk

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<sup>10</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>11</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.