

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES A. CARR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40003

JAMES A. CARR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40181

FILED

AUG 20 2003

ORDER OF AFFIRMANCE

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

These are proper person appeals from orders of the district court denying appellant's post-conviction petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition.<sup>1</sup>

On January 12, 1990, the district court convicted appellant, pursuant to a jury trial, of one count of burglary and one count of grand larceny in district court case number C89733. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two concurrent terms of life in the Nevada State Prison without the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction.<sup>2</sup> The remittitur issued on November 27, 1990.

On October 15, 1990, the district court convicted appellant, pursuant to a jury trial, of four counts of burglary and one count of grand

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<sup>1</sup>See NRAP 3(b).

<sup>2</sup>Carr v. State, Docket No. 20788 (Order Dismissing Appeal, November 7, 1990).

larceny in district court case number C90646. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve five concurrent terms of life in the Nevada State Prison without the possibility of parole. The district court imposed this sentence to run concurrently with the sentence imposed in district court case number C89733. This court dismissed appellant's appeal from his judgment of conviction.<sup>3</sup> The remittitur issued on April 6, 1993.

Appellant attempted to seek relief from his conviction in district court case number C89733 in post-conviction petitions filed in the district court. This court dismissed appellant's subsequent appeals.<sup>4</sup>

On May 28, 2002, appellant filed proper person post-conviction petitions for writs of habeas corpus in the district court in each district court case. The State opposed the petitions arguing that the petitions were untimely filed and successive. Moreover, the State specifically pleaded laches. Appellant filed replies. 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 13, 2002, and on September 6, 2002, the district court denied appellant's petitions. These appeals followed.

Appellant filed his petitions approximately twelve years after this court issued the remittitur from his direct appeal in district court case number C89733 and more than nine years after this court issued the

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<sup>3</sup>Carr v. State, Docket No. 21771 (Order Dismissing Appeal, March 18, 1993).

<sup>4</sup>Carr v. State, Docket No. 24964 (Order Dismissing Appeal, March 31, 1994); Carr v. State, Docket No. 23736 (Order Dismissing Appeal, November 23, 1992).

remittitur in district court case number C90646. Thus, appellant's petitions were untimely filed.<sup>5</sup> Moreover, appellant's petitions were successive because he had previously filed post-conviction petitions.<sup>6</sup> Appellant's petitions were procedurally barred absent a demonstration of good cause and prejudice.<sup>7</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>8</sup>

In an attempt to excuse his procedural defects, appellant argued that NRS 207.010, the habitual criminal statute, was unconstitutional. Appellant claimed that it subjected him to sentences disproportionate to his crimes—life sentences for non-violent felonies. Appellant claimed that there was a recent change in law pertaining to the applicability of habitual criminal enhancements to non-violent offenders. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse his procedural defects or overcome the presumption of prejudice to the State.<sup>9</sup> Even assuming that the cases stood for the propositions stated by appellant, appellant failed to demonstrate that any of the holdings in these cases applied to him in

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<sup>5</sup>See NRS 34.726(1).

<sup>6</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2).

<sup>7</sup>See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).


<sup>8</sup>See NRS 34.800(2).


<sup>9</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).


these post-conviction proceedings.<sup>10</sup> Appellant further failed to demonstrate that this claim was not reasonably available to him prior to the filing of these petitions.<sup>11</sup> Therefore, we affirm the orders of the district court denying appellant's petitions.

Having reviewed the records 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>12</sup> Accordingly, we

ORDER the judgments of the district court AFFIRMED.<sup>13</sup>

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

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<sup>10</sup>See Colwell v. State, 118 Nev. \_\_\_, 59 P.3d 463 (2002) (discussing retroactive application of new rules of criminal procedure).

<sup>11</sup>See Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001) (recognizing that good cause may be established if the petitioner demonstrates that the factual or legal basis for the claim was not reasonably available prior to the filing of the procedurally defaulted petition).

<sup>12</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>13</sup>We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.

cc: Hon. Donald M. Mosley, District Judge  
Hon. Lee A. Gates, District Judge  
James A. Carr  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk