

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABDUL HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56403

ABDUL HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56068

FILED

DEC 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying a post-conviction petition for a writ of habeas corpus and a motion to correct an illegal sentence.¹ Eighth Judicial District Court, Clark County; Doug Smith, Judge. We elect to consolidate these appeals for disposition. NRAP 3(b).

¹These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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Appellant filed his petition on February 9, 2010, nearly six years after issuance of the remittitur on direct appeal on June 4, 2004.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.³ See NRS 34.810(2). Appellant's petition was 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). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of laches. NRS 34.800(2).

Appellant did not provide cogent argument that he had good cause for the delay. To the extent that he argued that the procedural bars did not apply because he was challenging the constitutionality of the laws, the jurisdiction of the courts, and this court's interpretation of NRS 193.165, appellant's argument is without merit. Appellant's claims challenge the validity of the judgment of conviction, and thus, the procedural bars do apply in this case.⁴ See NRS 34.720(1); NRS 34.724(1).

²Howard v. State, Docket No. 42344 (Order of Affirmance, May 10, 2004).

³Howard v. State, Docket No. 45421 (Order of Affirmance, September 23, 2005)

⁴Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.

Next, to the extent that appellant claimed that he had good cause because of the 2007 amendments to NRS 193.165, the 2007 amendments did not provide good cause in the instant case. The 2007 amendments to NRS 193.165 do not apply retroactively, but rather apply only to those offenses committed after July 1, 2007. See State v. Dist. Ct. (Pullin), 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Appellant's offense was committed long before July 1, 2007.

Finally, appellant appeared to argue that a fundamental miscarriage of justice should overcome application of the procedural bars. Specifically, he argued that his due process rights had been violated because the laws reproduced in the Nevada Revised Statutes did not contain an enacting clause as required by the Nevada Constitution. Nev. Const. art. 4, § 23. He further claimed that this court erroneously interpreted NRS 193.165 to require a consecutive sentence. Appellant did not demonstrate a fundamental miscarriage of justice as his argument fell short of demonstrating actual innocence.⁵ Calderon v. Thompson, 523 U.S. 538, 559 (1998); Schlup v. Delo, 513 U.S. 298, 327 (1995); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Finally, appellant failed to overcome the presumption of prejudice to the State. We therefore conclude that the district court did not err in denying appellant's petition.⁶

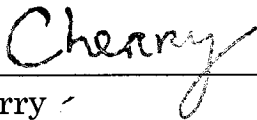
⁵We note that the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes reproduce those laws as classified, codified, and annotated by the Legislative Counsel. NRS 220.120.

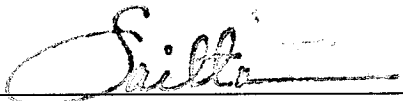
⁶We further conclude that the district court did not err in denying his request for a writ of mandamus or declaratory judgment. NRS 34.170.

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In his motion, filed on April 22, 2010, appellant claimed that his sentence is illegal because there was an error in his judgment of conviction regarding the deadly weapon enhancement. Appellant failed to demonstrate that his sentence was facially illegal and that the district court lacked jurisdiction. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). We therefore conclude that the district court did not err in denying appellant's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Cherry, J.


Saitta, J.


Gibbons, J.

cc: Hon. Doug Smith, District Judge
Abdul Howard
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk