

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT J. STOLTZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66313

**FILED**

JAN 21 2015

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

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant filed his petition on March 17, 2014, almost 19 years after entry of the judgment of conviction on May 22, 1985.<sup>2</sup> Thus, appellant's petition was untimely filed.<sup>3</sup> See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed several post-conviction petitions for a writ of habeas corpus.<sup>4</sup> See NRS 34.810(2).

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<sup>1</sup>This appeal has 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 *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>2</sup>No direct appeal was taken.


<sup>3</sup>In addition, we note that the petition was untimely from the January 1, 1993, effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).


<sup>4</sup>*Stoltz v. State*, Docket No. 30957 (Order Dismissing Appeal, November 30, 1998); *Stoltz v. State*, Docket No. 27916 (Order Dismissing Appeal, July 21, 1998).


Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Appellant claimed that he had good cause because he recently discovered information leading him to believe that his guilty plea agreement was violated by the denial of his request for a commutation of his sentence. Appellant failed to demonstrate good cause because this claim was reasonably available to be raised at an earlier time and appellant raised similar claims in his 1997 petition. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Therefore, the district court did not err in denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

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<sup>5</sup>The district court denied one of the claims raised below on its merits, but as discussed previously, should have denied the entire petition as procedurally barred. However, we affirm because the district court reached the right result in denying the petition. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970). We also conclude that the district court did not err in denying appellant's motion to proceed in forma pauperis and motion for the appointment of counsel.

cc: Hon. Brent T. Adams, District Judge  
Robert J. Stoltz  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk