

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PAUL SCOTT KLEIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67509

FILED

JUL 14 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 and motion to correct illegal sentence.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Paul Scott Klein filed his petition on December 8, 2014, more than 23 years after issuance of the remittitur on direct appeal on December 3, 1991. *Klein v. State*, 21223 (Order Dismissing Appeal, October 24, 1991). Thus, Klein's petition was untimely filed.² See NRS 34.726(1). Moreover, Klein's petition was successive because he had previously filed four post-conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude 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).

²We note the petition was untimely from the effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 5, at 75-76.

different from those raised in his previous petitions.³ See NRS 34.810(1)(b)(2); NRS 34.810(2). Klein'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). Klein did not attempt to demonstrate good cause to overcome the procedural bars and all of his claims were reasonably available to be raised in a prior 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 as procedurally barred.

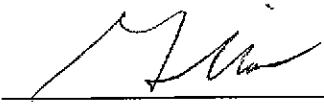
Next, Klein asserted his sentence was illegal because prison inmates in the Nevada Department of Corrections (NDOC) have a shortened life expectancy, which Klein asserted constitutes cruel and unusual punishment. This claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of this claim, we conclude the district court did not err in denying relief.


Finally, Klein asserted the State and the NDOC are deliberately indifferent to factors that reduce the life expectancy of prison

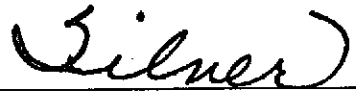
³*Klein v. State*, Docket No. 54438 (Order of Affirmance, July 15, 2010); *Klein v. State*, Docket No. 52546 (Order of Affirmance, August 25, 2009); Klein filed a post-conviction petition for a writ of habeas corpus in the district court on April 16, 2001, but voluntarily withdrew his appeal from the district court's denial of that petition, *Klein v. State*, Docket No. 38478 (Order Dismissing Appeal and Vacating Prior Order Directing Transmission of Record on Appeal in Docket No. 38478, November 16, 2001); *Klein v. State*, Docket No. 24410 (Order Dismissing Appeal, March 27, 1997).

inmates. This is a challenge to Klein's conditions of confinement and a post-conviction petition for a writ of habeas corpus is not the proper vehicle to raise such challenges. See *Bowen v. Warden*, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). Therefore, the district court properly denied relief for this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Paul Scott Klein
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk