

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY SCOTT HERMANSKI A/K/A
ROBERT JAMES DAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68392

FILED

DEC 29 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant Gregory Hermanski's March 13, 2015, petition was untimely because it was filed more than ten years after the Nevada Supreme Court issued the remittitur on direct appeal from the amended judgment of conviction on July 27, 2004.² See NRS 34.726(1). Hermanski's petition was also successive because he had previously filed two postconviction petitions for writs of habeas corpus, and his first petition was denied on the merits.³ Consequently, Hermanski's petition

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

²*Hermanski v. State*, Docket No. 41405 (Order of Affirmance, July 1, 2004).

³*Hermanski v. State*, Docket No. 65298 (Order Granting Rehearing, Reinstating Appeal, and Affirming, November 13, 2014); *Hermanski v. State*, Docket No. 65298 (continued on next page...)

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, Hermanski was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).

In an attempt to overcome the procedural bars to his petition, Hermanski claimed the State failed to file the certified judgments of conviction used to adjudicate him a habitual criminal and he was unaware of this fact before February 5, 2014. However, the district court found that because Hermanski raised this exact claim in his February 25, 2014, motion to vacate, he could not demonstrate good cause for the delay between filing the motion to vacate and the instant petition; the claim was belied by the sentencing transcript; and the Nevada Supreme Court previously established that Hermanski had 11 prior felony convictions. The district court further found that Hermanski failed to overcome the presumption of prejudice to the State.

The record on appeal supports the district court's findings, and we conclude the district court did not err by summarily denying Hermanski's habeas petition without appointing counsel or conducting an evidentiary hearing. See NRS 34.750(1); NRS 34.770(2); *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) ("[I]n order to establish adequate cause, the [good cause] claim itself must not be procedurally defaulted."); *Hermanski v. State*, Docket No. 41405 (Order of Affirmance,

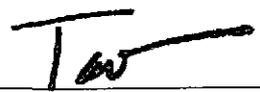
...continued

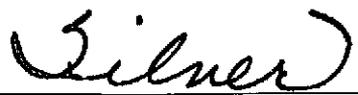
State, Docket No. 47011 (Order of Affirmance and Limited Remand to Correct a Judgment of Conviction, July 13, 2006).

July 1, 2004), p. 3 n.2 (discussing Hermanski's criminal history).
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elissa F. Cadish, District Judge
Gregory Scott Hermanski
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk