

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OMAR HERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69001

FILED

APR 20 2016

FRANCIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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; Douglas Smith, Judge.

Appellant Omar Hernandez filed his petition on June 9, 2015, more than 12 years after entry of the judgment of conviction on July 1, 2002. Thus, Hernandez's petition was untimely filed. *See* NRS 34.726(1). Hernandez's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1). Moreover, because the State specifically pleaded laches, Hernandez was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

In an attempt to overcome the procedural bars, Hernandez claimed he had good cause because defense counsel said he would perfect an appeal in Nevada while Hernandez was being prosecuted for criminal offenses he committed in Arizona. And when Hernandez returned from


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).

Arizona, defense counsel stated he would look into the matter of the appeal but subsequently passed away. The record reveals Hernandez raised a substantially similar good-cause claim in his first habeas petition, the district court found he "failed to demonstrate his appeal-deprivation claim was not reasonably available for him to raise in a timely manner," and the Nevada Supreme Court affirmed the district court's finding on appeal. *Hernandez*, Docket No. 54791 (Order of Affirmance, December 10, 2010).

We conclude the doctrine of law of the case barred further litigation of Hernandez's good-cause claim, *see Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975), Hernandez failed to rebut the presumption of prejudice to the State, *see* NRS 34.800(2), and the district court did not err by summarily denying Hernandez's habeas petition without appointing counsel or conducting an evidentiary hearing, *see* NRS 34.750(1); NRS 34.770(2). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Omar Hernandez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk