


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN STEVEN OLAUSEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69343

FILED

JUN 22 2016

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a motion to withdraw a guilty plea.¹ Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant John Steven Olausen filed his motion² on January 21, 2015 and amended motion of September 23, 2015, more than 29 years after issuance of the remittitur on direct appeal on December 19, 1985, which affirmed the conviction for murder, first-degree kidnapping with the use of a deadly weapon, and robbery with the use of a deadly weapon, *see Wilson v. State*, 99 Nev. 362, 664 P.2d 328 (1983), *aff'd on rehearing*, 101

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

²We note the district court properly construed the motion as a postconviction petition for a writ of habeas corpus. *See Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 628 (2014).

Nev. 452, 705 P.2d 151 (1985), and more than 25 years after Olausen was resentenced upon being granted postconviction relief on his sentence on December 7, 1989.³ Thus, Olausen's motion was untimely filed. See NRS 34.726(1). Moreover, Olausen's motion was successive because he had previously litigated several postconviction petitions for relief, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.⁴ See NRS 34.810(2). Olausen's motion was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Olausen filed his motion prior to entry of an amended judgment of conviction on May 27, 2015, and he therefore asserts his

³The December 7, 1989, document labeled "Findings, Determinations, and Imposition of Sentence" [FDIS] has previously been determined to be a valid judgment of conviction. See *Olausen v. State*, Docket No. 56066 (Order of Affirmance, November 8, 2010); *Olausen v. State*, Docket No. 48841 (Order of Affirmance, September 7, 2007). No timely direct appeal was taken from the December 7, 1989, FDIS. See *Olausen v. State*, Docket No. 28669 (Order Dismissing Appeals, September 14, 1996). Further, the petition was filed more than one year after the effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, §§ 5, 33, at 75-76, 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).

⁴*Olausen v. Warden*, Docket No. 63360 (Order of Affirmance and Remand For Correction of Clerical Error in Record, January 16, 2014); Olausen did not timely appeal from the denial of his 2008 habeas corpus petition; *Olausen v. State*, Docket No. 48841 (Order of Affirmance, September 7, 2007); *Olausen v. State*, Docket No. 36918 (Order of Affirmance, December 10, 2002); *Wilson v. State*, 105 Nev. 110, 771 P.2d 583 (1989).


claims should not be subject to the procedural bars involving postconviction petitions for a writ of habeas corpus.⁵ Olausen's argument is without merit. The Nevada Supreme Court stated in Olausen's prior postconviction petition for a writ of habeas corpus that entry of a corrected judgment of conviction would not "restart the clock" for Olausen to litigate the guilt phase of his conviction. *Olausen v. Warden*, Docket No. 63360 (Order of Affirmance and Remand for Correction of Clerical Error in Record, January 14, 2015). All of Olausen's underlying claims stem from prior to entry of his guilty plea in 1979. Entry of the amended judgment of conviction had no bearing upon Olausen's ability to raise these claims at an earlier time and did not excuse application of the procedural bars. See *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004) (explaining that an amended judgment of conviction may provide good cause to raise claims relating to the amendment, but not for claims that could have been raised in prior proceedings).


Next, Olausen argues the district court's order denying his motion did not provide sufficient analysis or explanation for its decision to deny relief. We conclude the district court's written order was sufficient


⁵We note the Nevada Supreme Court directed the district court to enter an amended judgment of conviction nunc pro tunc to the sentencing date of December 14, 1979. *Olausen v. Warden*, Docket No. 63360 (Order of Affirmance and Remand for Correction of Clerical Error in Record, January 14, 2015).

for this court's appellate review of this matter. Therefore, Olausen fails to demonstrate he is entitled to relief and we,

ORDER the judgment of the district court AFFIRMED.⁶


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Connie J. Steinheimer, District Judge
John Steven Olausen
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

⁶We note Olausen has filed a second informal brief. The filing of a second informal brief is not permissible absent permission from the court and Olausen did not seek leave to file the second informal brief. See NRAP 28(a); NRAP 46A(a). Nevertheless, the State has not opposed the filing of the second brief and we have considered it in our disposition of this matter. We conclude no relief based upon the additional brief is warranted. To the extent Olausen has attempted to present claims or facts which were not previously presented in the proceedings below, we decline to consider them in the first instance.