

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GEORGE W. LUSTER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70978

FILED

FEB 23 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant George W. Luster, Jr. appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Luster argues the district court erred in denying his petition as procedurally barred. Luster filed his petition on January 5, 2016, almost 16 years after issuance of the remittitur on direct appeal on January 25, 2000. *Luster v. State*, 115 Nev. 431, 991 P.2d 466 (1999). Thus, Luster's petition was untimely filed. See NRS 34.726(1). Moreover, Luster's petition was successive because he had previously filed two postconviction petitions for a writ of habeas corpus, and it constituted an

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

abuse of the writ as he raised claims new and different from those raised in his previous petitions.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Luster'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).

Luster claimed he had good cause because he recently discovered the State withheld exculpatory reports regarding handwriting analysis of a note given to a kidnapping victim. The district court concluded Luster's claim was belied by the record. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The parties discussed the handwriting analysis on the record during a pretrial hearing and the State asserted the expert witnesses could not conclusively say whether Luster had written the note. Luster also asserted he obtained information related to the handwriting analysis from the counsel who represented him during federal habeas corpus proceedings, which demonstrated the State had disclosed this evidence to Luster's defense team. As this information was provided to the defense and was discussed at a pretrial hearing, Luster failed to establish good cause because he did not demonstrate his delay in raising claims related to the handwriting analysis occurred due to an impediment external to the defense. See *State v. Bennett*, 119 Nev.

²*Luster v. State*, Docket No. 56231 (Order of Affirmance, March 18, 2011); *Luster v. State*, Docket No. 46872 (Order of Affirmance, July 5, 2006).

589, 599, 81 P.3d 1, 8 (2003). Therefore, we conclude the district court properly denied the petition as procedurally barred and we

ORDER the judgment of the district court AFFIRMED.

Silver, C.J.

Silver

Tao, J.
Tao

Gibbons, J.
Gibbons

cc: Hon. Carolyn Ellsworth, District Judge
George W. Luster, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk