

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60343

FILED

DEC 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant filed his petition on November 21, 2011, and a later supplemental petition on December 12, 2011, over 11 years after the issuance of remittitur in his direct appeal on September 19, 2000. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed two

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

post-conviction petitions for a writ of habeas corpus.² See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

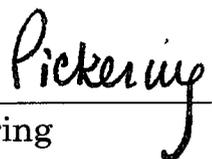
In an attempt to excuse his procedural defects, appellant alleged that failure to consider his claims would result in a fundamental miscarriage of justice, ineffective assistance of trial and appellate counsel provided him with good cause to file another petition, and his claim was not reasonably available prior to the bringing of the instant petition. We conclude that appellant failed to overcome the procedural bars for the following reasons. First, appellant did not present any new evidence; therefore, he failed to demonstrate a fundamental miscarriage of justice. See House v. Bell, 547 U.S. 518, 537 (2006) (opining that actual innocence exception requires new evidence demonstrating innocence); Schlup v. Delo, 513 U.S. 298, 316 (1995) (same). Second, while the ineffective assistance of trial and appellate counsel may provide good cause to raise claims in a later post-conviction petition, the instant petition was filed over eleven years after the conclusion of appellant's trial and direct appeal and therefore appellant failed to establish good cause for the entire length of his delay. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506

²See Peck v. State, Docket No. 57968 (Order of Affirmance, July 15, 2011); Peck v. State, Docket No. 42672 (Order of Affirmance, July 11, 2005).

(2003). Third, appellant does not rely on any authority decided since his prior post-conviction petition, therefore, he failed to demonstrate that the grounds upon which he is currently relying were not available prior to the filing of the instant petition. See id. at 253, 71 P.3d at 506 (stating that a claim reasonably available during the statutory time period would not constitute good cause for delay in filing petition). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.