

IN THE SUPREME COURT OF THE STATE OF NEVADA

HENRY SASHINGER, JR.,
Appellant,
vs.
WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER, DON
HELLING,
Respondent.

No. 44364

FILED

MAY 19 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ruben*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

On March 14, 1996, the district court convicted appellant, pursuant to a jury verdict, of nine separate offenses: burglary (counts I, V, and VII); conspiracy to commit larceny (count II); grand larceny (count III); conspiracy to commit burglary (counts VI and VIII); fraudulent use of a credit card (count IX); and possession of credit cards without consent (count X). The district court sentenced appellant to multiple prison terms. On direct appeal, this court affirmed the judgment of conviction.¹ The remittitur issued on April 29, 1998.

On December 15, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel, who filed a supplemental petition. On

¹Sashinger v. State, Docket No. 28414 (Order Dismissing Appeal, April 10, 1998).

June 19, 2000, the district court denied appellant's petition. On appeal, this court affirmed the judgment of the district court.²

On October 6, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel, who filed a supplemental petition. The State filed a motion to dismiss the petition as untimely and successive. Appellant's counsel filed an opposition to the motion to dismiss. The district court granted the motion, and on October 28, 2004, entered an order dismissing the petition.

Appellant contends that the district court erred by granting the motion to dismiss. We disagree. Appellant filed his petition more than five years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.⁶

Appellant does not attempt to demonstrate good cause or prejudice to excuse the procedural defects. Rather, appellant argues that a failure to review his claims would result in a fundamental miscarriage of

²Sashinger v. State, Docket No. 36426 (Order of Affirmance, November 15, 2000).

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

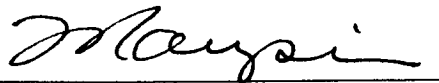
⁶Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

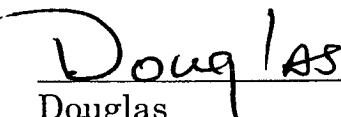
justice. Specifically, appellant argues that he "is actually innocent of many of the charges for which he was convicted by the jury."

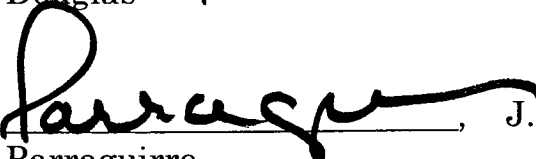
A reviewing court must reach a claim if failure to consider it would result in a fundamental miscarriage of justice, i.e., where a constitutional violation has probably resulted in the conviction of someone who is actually innocent.⁷ This requires a petitioner to "show that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt."⁸ The district court found that appellant did not make this requisite showing. Appellant has not demonstrated that the district court erred. We therefore conclude that the district court did not err in denying appellant's petition as being procedurally barred.

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

⁷See Schlup v. Delo, 513 U.S. 298, 327-28 (1995); Mazzan, 112 Nev. at 842, 921 P.2d at 922 (1996).

⁸Schlup, 513 U.S. at 327.

cc: Second Judicial District Court Dept. 9, District Judge
Karla K. Butko
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk