

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT JERROD MAYFIELD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45770

FILED

NOV 10 2005

ORDER OF AFFIRMANCE

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

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. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On March 8, 1991, the district court convicted appellant, pursuant to a guilty plea, of robbery with the use of a deadly weapon and first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life with the possibility of parole for the murder with the use of a deadly weapon, concurrent to two consecutive terms of nine years for the robbery with the use of a deadly weapon in the Nevada State Prison. Appellant did not file a direct appeal.

On January 26, 1993, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to

conduct an evidentiary hearing. On November 27, 1995, the district court denied appellant's petition. This court dismissed appellant's appeal.¹

On January 31, 2000, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition as being successive. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 13, 2000, the district court denied appellant's petition. This court affirmed the district court's dismissal of appellant's petition as untimely and successive.²

On May 4, 2005, appellant filed a third proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition as being successive. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 2, 2004, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than fourteen years after the district court entered his judgment of conviction. 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

¹Mayfield v. State, Docket No. 28041 (Order Dismissing Appeal, April 15, 1999).

²Mayfield v. State, Docket No. 36106 (Order of Affirmance, January 22, 2002).

³See NRS 34.726(1).

habeas corpus.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ A petitioner may be entitled to a review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.⁶

Appellant did not attempt to demonstrate good cause or prejudice to excuse the procedural defects. Rather, appellant argued that a failure to review his claims would result in a fundamental miscarriage of justice. Specifically, appellant argued that he is actually innocent of the dangerous weapon enhancements for which he was sentenced pursuant to this court's holding in Zgombic v. State.⁷

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.⁸ This requires a petitioner to "show that it is more likely than not that no reasonable juror would have convicted him."⁹ "[A]ctual innocence' means factual innocence, not mere legal

⁴See NRS 34.810(2).

⁵See NRS 34.810(3).

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

⁷106 Nev. 571, 798 P.2d 548 (1990).

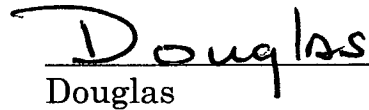
⁸See Bousley v. U.S., 523 U.S. 614 (1998); Mazzan, 112 Nev. at 842, 921 P.2d at 922 (1996).

⁹Bousley, 523 U.S. at 623 (quoting Schlup v. Delo, 513 U.S. 298, 327-28 (1995)).

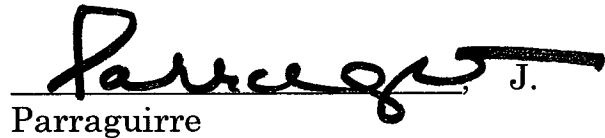
insufficiency.”¹⁰ Appellant failed to demonstrate that he was actually innocent, and therefore, we conclude that the district court did not err in denying appellant’s petition as procedurally barred.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²

 _____, J.
Douglas

 _____, J.
Rose

 _____, J.
Parraguirre

¹⁰Bousley, 523 U.S. at 623-624 (citing Sawyer v. Whitley, 505 U.S. 333, 339 (1992)).

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We 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.

cc: Hon. Sally L. Loehrer, District Judge
Robert Jerrod Mayfield
Attorney General
Clark County District Attorney David J. Roger
Clark County Clerk