

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUKE FREDRICK CRANFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46307

FILED

APR 19 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On July 1, 1977, the district court convicted appellant, pursuant to a jury verdict, of first-degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison. This court affirmed the judgment of conviction on direct appeal.¹ The remittitur issued on July 23, 1979. Appellant unsuccessfully sought post-conviction relief.²

¹Cranford v. State, 95 Nev. 471, 596 P.2d 489 (1979).

²See Cranford v. State, Docket No. 44238 (Order of Affirmance, February 16, 2005); Cranford v. State, Docket No. 29344 (Order Dismissing Appeal, November 19, 1996); Cranford v. State, Docket No. 20894 (Order Dismissing Appeal, April 19, 1990); Cranford v. State, Docket No. 20097 (Order Dismissing Appeal, June 22, 1989).

On June 6, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a response and a motion to dismiss the petition. Appellant filed an opposition to the motion to dismiss. 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 October 7, 2005, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately twenty-six years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁵

In an attempt to demonstrate good cause for the delay, appellant argued that he is actually innocent of first-degree murder. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition.

A petitioner can demonstrate good cause and prejudice to overcome the procedural bar if he demonstrates that he is actually

³See NRS 34.726(1).

⁴See *id.*

⁵See NRS 34.800(2).

innocent of the underlying crime.⁶ "To be credible,' a claim of actual innocence must be based on reliable evidence not presented at trial."⁷ To demonstrate that he is actually innocent of the underlying crime, a petitioner must show that "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence."⁸

To support his claim of actual innocence, appellant included a 1983 affidavit by Terry Smith, which stated that he knew nothing about the murder, but if the murder occurred between 1:00 and 4:00 p.m. appellant could not have been involved because he was with appellant during that time period. Our review of the record on appeal indicates it is not likely that inclusion of this affidavit at appellant's trial would have altered the outcome of the trial. As this court has previously noted, satisfactory evidence of appellant's guilt was presented at trial,⁹ and the affidavit offered by appellant does not discount that evidence. Appellant did not present any other new evidence to support his claim of actual innocence.

Appellant failed to demonstrate that he is actually innocent of the underlying crime, and, therefore, he necessarily failed to demonstrate

⁶See Bousley v. United States, 523 U.S. 614, 623 (1998).

⁷Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schulp v. Delo, 513 U.S. 298, 324 (1995)).

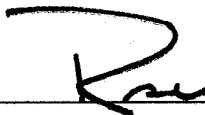
⁸Id. (quoting Schulp, 513 U.S. at 327).


⁹See Cranford v. State, Docket No. 44238 (Order of Affirmance, February 16, 2005).

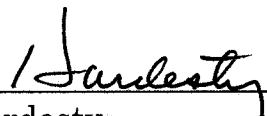
good cause for the untimely filing of his petition. Accordingly, we affirm the district court's dismissal of appellant's petition.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹¹


_____, C.J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Donald M. Mosley, District Judge
Duke Fredrick Cranford
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹¹We 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.