

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS R. LORD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46742

**FILED**

**NOV 29 2006**

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is an 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; Donald M. Mosley, Judge.

On December 5, 1991, the district court convicted appellant Thomas R. Lord, pursuant to a jury verdict, of conspiracy to commit robbery and/or murder, first-degree murder with the use of a deadly weapon, and robbery with the use of a deadly weapon. The district court sentenced Lord to death for murder with the use of a deadly weapon, two consecutive sentences of 15 years in prison for robbery with the use of a deadly weapon, and six years for conspiracy, with the robbery and conspiracy sentences to be served concurrently to each other but consecutively to the sentence for the murder. This court affirmed the judgment of conviction on direct appeal but remanded for resentencing for the murder.<sup>1</sup> On remand, Lord received a sentence of two consecutive terms of life in prison without the possibility of parole for the murder.

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<sup>1</sup>Lord v. State, 107 Nev. 28, 806 P.2d 548 (1991).

Lord filed a petition for post-conviction relief on December 17, 1992. This court dismissed Lord's appeal from the denial of that petition.<sup>2</sup>

On July 25, 2005, Lord filed a second post-conviction petition, seeking habeas relief based on a claim that he was actually innocent of the charges. The State filed a motion to dismiss, arguing that Lord's petition was successive, time-barred, and subject to laches, as well as without merit. The district court ruled that Lord failed to raise a colorable claim of actual innocence that would entitle him to a hearing on his claims. This appeal followed.

Lord filed his petition approximately 14 years after this court affirmed his conviction. Thus, his petition was untimely.<sup>3</sup> The petition was also successive.<sup>4</sup> Because more than five years passed between the filing of the judgment of conviction and Lord's filing of the instant petition, prejudice to the State is presumed.<sup>5</sup> Lord's petition is barred absent a showing of good cause and prejudice<sup>6</sup> or that "a constitutional violation has probably resulted in the conviction of one who is actually innocent."<sup>7</sup> "[A]ctual innocence' means factual innocence, not mere legal

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<sup>2</sup>Lord v. State, Docket No. 27324 (Order Dismissing Appeal, May 19, 1998).

<sup>3</sup>NRS 34.726(1).

<sup>4</sup>NRS 34.810(2).

<sup>5</sup>See NRS 34.800(2).

<sup>6</sup>See NRS 34.726(1); NRS 34.800(1)(b); NRS 34.810(1), (3).

<sup>7</sup>Murray v. Carrier, 477 U.S. 478, 496 (1986); see also Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

insufficiency."<sup>8</sup> To establish actual innocence, the petitioner must show that "it is more likely than not that no reasonable juror would have convicted him."<sup>9</sup>

Lord does not attempt to show good cause, instead claiming he is actually innocent of the crimes. Lord bases his claim of actual innocence on an affidavit executed by James McDougal, Lord's coconspirator in the crimes. McDougal was also convicted by a jury for his participation in the crimes, but his murder sentence includes the possibility of parole. McDougal's affidavit states that he was "solely responsible for the entire incident," that it was "his fault in every way," and that Lord "had nothing to do with the crime."

We conclude that McDougal's affidavit does not establish that no reasonable juror would have convicted Lord. The robbery and murder were charged under alternate theories of direct liability and aiding and abetting. At the time of Lord's trial, McDougal had implicated Lord in the crimes. McDougal did not testify at Lord's trial. Lord's appendix provides a few short excerpts of McDougal's testimony at his own trial, in which McDougal appears to testify he was with Lord and the victim before the victim's death but does not remember much between that time and some time later, when he woke up in the desert with Lord. At Lord's trial, witnesses testified that Lord and McDougal were in the victim's truck two hours after the victim's body was found; the victim's truck had numerous

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<sup>8</sup>Bousley v. United States, 523 U.S. 614, 623-24 (1998) (citing Sawyer v. Whitley, 505 U.S. 333, 339 (1992)).

<sup>9</sup>Id. at 623 (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)).

bloodstains inside; McDougal, accompanied by Lord, tried to trade property like that stolen from the victim for gasoline; and Lord had blood on one of his boots that matched the victim's blood type, but not Lord's or McDougal's.<sup>10</sup> Because Lord has not established a colorable claim of actual innocence, his claims were properly dismissed as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.  
Becker

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

cc: Hon. Donald M. Mosley, District Judge  
Federal Public Defender/Las Vegas  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>10</sup>Lord, 107 Nev. at 31-32, 806 P.2d at 550.