

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JOSEPH GEIGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47475

FILED

SEP 07 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On May 1, 2003, appellant Michael Joseph Geiger was convicted, pursuant to a guilty plea, of one count of possession of a stolen motor vehicle. The district court sentenced Geiger to serve a prison term of 14 to 120 months. Geiger filed a direct appeal, and this court affirmed the judgment of conviction.¹ The remittitur issued on September 9, 2003.

On October 8, 2004, Geiger filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel, and counsel filed a supplement to the petition. The State filed a motion to dismiss the petition, and counsel filed an opposition to the motion to dismiss. After hearing arguments from counsel, the district court granted the State's motion to dismiss the petition.

Geiger contends that the district court erred by dismissing his petition without conducting an evidentiary hearing because he made a

¹Geiger v. State, Docket No. 41452 (Order of Affirmance, August 13, 2003).

colorable showing of actual innocence sufficient to overcome the procedural bar. Specifically, Geiger contends that he was innocent of the crime of possession of a stolen vehicle because he never intended to permanently deprive the owner of the vehicle and therefore only committed the crime of joyriding.² We conclude that Geiger's contentions lack merit.

Geiger concedes that his petition was untimely, and as such, is procedurally barred absent a demonstration of good cause and prejudice.³ A colorable showing of actual innocence may excuse a failure to demonstrate cause to excuse procedural bars under the fundamental miscarriage of justice standard.⁴ "[A]ctual innocence' means factual innocence, not mere legal insufficiency."⁵ "To avoid application of the procedural bar to claims attacking the validity of the conviction, a petitioner claiming actual innocence must show that it is more likely than not that no reasonable juror would have convicted him absent a constitutional violation."⁶

We conclude that the district court did not err in dismissing the petition. Even assuming Geiger testified that he did not have the

²See NRS 205.2715.

³See NRS 34.726(1); 34.810(3).

⁴Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

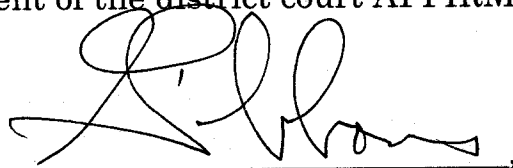
⁵Bousley v. United States, 523 U.S. 614, 623-624 (1998) (citing Sawyer v. Whitley, 505 U.S. 333, 339 (1992)); Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996).


⁶Pellegrini, 117 Nev. at 887, 34 P.3d at 537 (citing Schlup v. Delo, 513 U.S. 298, 327 (1995)).

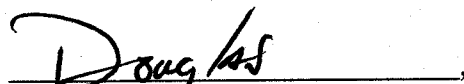
intent to steal, in light of the testimony adduced at the preliminary hearing, Geiger has failed to show that it is more likely than not that he would have been acquitted of the crime of possession of a stolen vehicle. Accordingly, the district court did not err by ruling that the petition was procedurally barred because Geiger failed to make a colorable showing of actual innocence.⁷

Having considered Geiger's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Connie J. Steinheimer, District Judge
Karla K. Butko
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁷Because the petition was procedurally barred, we need not reach the merits of Geiger's claim that he was deprived of his constitutional right to effective assistance of counsel.