

IN THE SUPREME COURT OF THE STATE OF NEVADA

MILTON PLUMMER A/K/A MILTON
DAVID PLUMMER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48910

MILTON PLUMMER A/K/A MILTON
DAVID PLUMMER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48911

FILED

AUG 14 2007

ORDERS OF AFFIRMANCE

JAIETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

These are appeals from orders of the district court dismissing appellant's post-conviction petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition.¹ Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On August 23, 2002, appellant was convicted, pursuant to guilty pleas, in two cases. In district court case no. CR012427, appellant was convicted of one count each of robbery with the use of a deadly weapon and burglary with a deadly weapon. In district court case no. CR012499, appellant was convicted of two counts of robbery with the use of a deadly weapon and one count of burglary with a deadly weapon.

Accordingly, in district court case no. CR012427, the district court sentenced appellant to serve two consecutive prison terms of 72-180 months for the robbery and deadly weapon enhancement, and a

¹See NRAP 3(b).

concurrent term of 72-180 months for the burglary. In district court case no. CR012499, the district court sentenced appellant to serve five consecutive prison terms of 72-180 months. The sentences in district court case no. CR012499 were ordered to run consecutively to the sentences imposed in district court case no. CR012427. On appeal, this court affirmed the judgments of conviction.² The remittiturs were issued on August 5, 2003.

On October 6, 2003, appellant filed proper person post-conviction petitions for writs of habeas corpus in both district court cases. The district court appointed counsel to represent appellant, conducted an evidentiary hearing, and denied appellant's petitions. This court affirmed the district court orders on appeal.³

On October 19, 2006, appellant filed proper person post-convictions petitions for writs of habeas corpus in both district court cases. The State opposed the petitions. 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 January 26, 2007, the district court dismissed the petition in court case number CR012499. On February 1, 2007, the district court dismissed the petition in district court case number CR012427. These appeals followed.

Appellant filed his petitions more than 3 years after this court issued the remittiturs from his direct appeals. Thus, appellant's petitions

²See Plummer v. State, Docket Nos. 40170, 40185 (Order of Affirmance, July 9, 2003).

³See Plummer v. State, Docket Nos. 44619, 44621 (Order of Affirmance, June 14, 2005).

were untimely filed.⁴ Moreover, appellant's petitions were successive and constituted an abuse of the writ.⁵ Appellant's petitions were procedurally barred absent a demonstration of good cause and prejudice.⁶ In the event that good cause is not shown, 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.⁷ A petitioner may meet this standard upon a colorable showing that he or she is actually innocent of the crime or is ineligible for the death penalty.⁸

In an attempt to excuse his procedural defects, appellant argued ineffective assistance of trial and appellate counsel excused his delay. He further argued a fundamental miscarriage of justice based upon a claim of actual innocence. Appellant failed to set forth any facts demonstrating that ineffective assistance of trial and appellate counsel excused his delay.⁹ Additionally, appellant failed to demonstrate a fundamental miscarriage of justice based upon his claims of actual innocence.¹⁰ Appellant failed to demonstrate a fundamental miscarriage of justice based upon his claims of actual innocence because he failed to

⁴See NRS 34.726(1).

⁵See NRS 34.810(2).

⁶See NRS 34.726(1); NRS 34.810(1)(b)(3).

⁷Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

⁸Id.

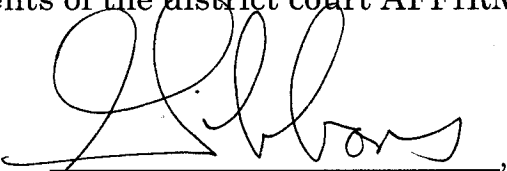
⁹See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

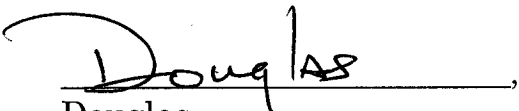
¹⁰Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (recognizing that a petitioner may not complain of events that preceded his guilty plea).

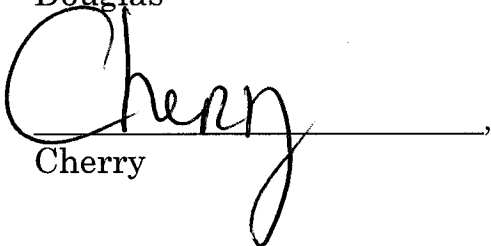
demonstrate that he was actually innocent of all of the charges foregone by the State in the plea bargaining process.¹¹ Therefore, we conclude that the district court did not err in determining that appellant's petitions were procedurally barred.

Having reviewed the records 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.¹² Accordingly, we affirm the orders of the district court, and

ORDER the judgments of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

¹¹See Pellegrini v. State, 117 Nev. at 887, 34 P.3d at 537; Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922; see also Bousley v. United States, 523 U.S. 614 (1998) (recognizing that actual innocence in a case involving a guilty plea requires that the petitioner demonstrate that he is actually innocent of more serious charges foregone by the State in the course of plea bargaining).

¹²See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Robert H. Perry, District Judge
Milton Plummer
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk