

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH DAVID HOUSTON,  
Appellant,  
vs.  
WARDEN, LOVELOCK  
CORRECTIONAL CENTER, JACK  
PALMER,  
Respondent.

No. 49910

**FILED**

MAR 10 2008

TRACEE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

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. First Judicial District Court, Carson City; James Todd Russell, Judge.

On February 14, 1983, the district court convicted appellant, pursuant to a guilty plea, of one count of first-degree murder and one count of sexual assault causing great bodily harm. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. Appellant did not file a direct appeal. Appellant attempted unsuccessfully to seek post-conviction relief in several proceedings.<sup>1</sup>

---

<sup>1</sup>Houston v. State, Docket No. 50532 (Order Denying Petition, December 10, 2007); Houston v. State, Docket No. 46587 (Order of Affirmance, May 2, 2006); Houston v. State, Docket No. 40652 (Order of *continued on next page . . .*

On January 19, 2007, 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 July 3, 2007, the district court denied the petition. This appeal followed.

Appellant filed his petition nearly 24 years after entry of the judgment of conviction and 13 years after the effective date of NRS 34.726.<sup>2</sup> Thus, appellant's petition was untimely filed.<sup>3</sup> Moreover, appellant's petition was successive because he had previously filed petitions for post-conviction relief.<sup>4</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>5</sup> In the event that good cause is not shown, a petitioner may be entitled to a review of

---

*... continued*

Affirmance, November 14, 2003); Houston v. State, Docket No. 36271 (Order of Affirmance, August 7, 2001); Houston v. State, Docket No. 30059 (Order Dismissing Appeal, March 30, 1999); Houston v. State, Docket No. 22706 (Order Dismissing Appeal, December 30, 1991).

<sup>2</sup>1991 Nev. Stat., ch. 44, § 5, at 75-76, ch. 44, § 33, at 92 (NRS 34.726).

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

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

<sup>5</sup>See NRS 34.726(1); NRS 34.810(3).

defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.<sup>6</sup> 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.<sup>7</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>8</sup>

In an attempt to excuse his procedural defects, appellant argued that he had good cause for the delay because his claim was premised upon new law set forth in McConnell v. State.<sup>9</sup> Specifically, appellant claimed that his guilty plea was not knowing and voluntary because, when he entered his guilty plea, he was not aware that sexual assault could not be considered as an aggravating factor for the State to seek the death penalty when the State was already using sexual assault to establish first-degree felony murder. Appellant contended that his guilty plea was improper because he entered his plea to avoid the death penalty and new law now established that the State inappropriately used an element of first-degree felony murder as an aggravator in its notice of intent to seek the death penalty.

---

<sup>6</sup>Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

<sup>7</sup>Id.

<sup>8</sup>See NRS 34.800(2).

<sup>9</sup>120 Nev. 1043, 102 P.3d 606 (2004).

Based upon our review of the record on appeal, we conclude that appellant failed to establish good cause for the delay. The decision in McConnell<sup>10</sup> does not provide good cause in the instant case because appellant waited more than 3 years after McConnell<sup>11</sup> was decided to file his petition.<sup>12</sup> Thus appellant failed to demonstrate good cause for the entirety of his delay.<sup>13</sup> Furthermore, appellant failed to demonstrate a fundamental miscarriage of justice because he failed to demonstrate that he was actually innocent of all of the charges foregone by the State in the plea bargaining process.<sup>14</sup> Finally, appellant's claim was barred under the doctrine of laches as appellant failed to overcome the presumption of prejudice to the State.

---

<sup>10</sup>Id.

<sup>11</sup>Id.

<sup>12</sup>See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

<sup>13</sup>Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).


<sup>14</sup>See 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).

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.<sup>15</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>16</sup>

 \_\_\_\_\_, J.

Maupin

 \_\_\_\_\_, J.

Cherry

 \_\_\_\_\_, J.

Saitta

cc: Hon. James Todd Russell, District Judge  
Keith David Houston  
Attorney General Catherine Cortez Masto/Carson City  
Carson City District Attorney  
Carson City Clerk

---

<sup>15</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>16</sup>On August 16, 2007, appellant filed a motion for the appointment of counsel in this appeal. No good cause appearing, this court denies the motion. See NRAP 46(c).