

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY L. EVERETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51052

FILED

AUG 19 2008

FRANIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

On May 20, 1981, the district court convicted appellant, pursuant to a guilty plea, of first-degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison without the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on October 12, 1982.

On November 6, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that the petition was untimely filed.

¹Everett v. State, Docket No. 13434 (Order Dismissing Appeal, September 23, 1982).

Moreover, the State specifically pleaded laches. 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 25, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his counsel was ineffective and that his plea was not entered knowingly and voluntarily.

Appellant filed his petition more than twenty-five years after this court issued the remittitur from his direct appeal and more than thirteen years after the effective date of NRS 34.726.² Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁴ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁵ A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.⁶ In order to demonstrate a

²1991 Nev. Stat., ch. 44, § 33, at 92.

³See NRS 34.726.

⁴See id.

⁵See NRS 34.800(2).

⁶Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence of the crime.⁷

In an attempt to excuse his procedural defects, appellant argued that he lacked legal knowledge and assistance. Appellant further claimed that he was actually innocent. Specifically, appellant argued that no trier of fact would have found him guilty of first-degree murder because there was no evidence that he committed, planned, aided, plotted, participated in or was aware of the murder.

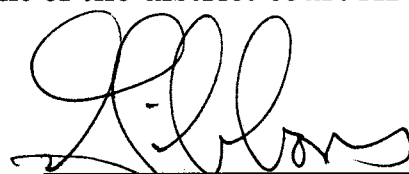
Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition. Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.⁸ Further, appellant's claim of actual innocence was bereft of any specific facts, and thus, appellant failed to make a colorable showing of actual innocence. Finally, appellant failed to overcome the presumption of prejudice in the instant case. Therefore, we affirm the order of the district court.

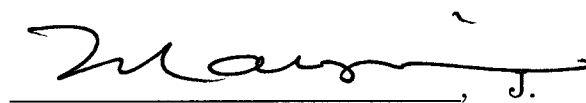
⁷Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

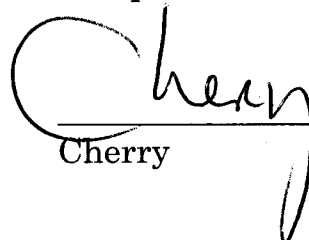
⁸See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, C. J.
Gibbons


_____, J.
Maupin


_____, J.
Cherry

cc: Hon. David B. Barker, District Judge
Gregory L. Everett
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We 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. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.