

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM HENRY COLLIER, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51259

**FILED**

FEB 10 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a motion for coram nobis. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On March 31, 2003, the district court convicted appellant, pursuant to a jury trial, of one count of burglary and two counts of robbery with the use of deadly weapon. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve three concurrent terms of 10 to 25 years. This court affirmed the judgment of conviction on direct appeal. Collier v. State, Docket No. 41299 (Order of Affirmance, October 13, 2003). The remittitur issued on November 7, 2003.

On January 4, 2008, appellant filed a proper person motion for coram nobis. The State opposed the motion. On February 4, 2008, the district court denied the motion. This appeal followed.

In his motion, appellant challenged the validity of his judgment of conviction and sentence. Appellant claimed that he received ineffective assistance of counsel, the prosecutor committed misconduct, his habitual criminal adjudication was improper, and he was actually innocent.

NRS 34.724(2)(b) expressly provides that a post-conviction petition for a writ of habeas corpus “[c]omprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them.” Because appellant challenged the validity of his judgment of conviction, the district court correctly denied the motion for coram nobis.

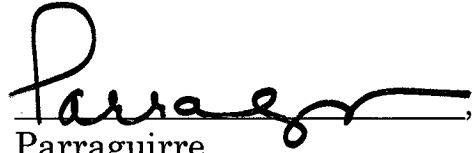
Even assuming, without deciding, that appellant’s motion should have been construed as a post-conviction petition for a writ of habeas corpus, appellant’s motion was untimely filed. Appellant filed his motion more than four years after this court issued the remittitur from his direct appeal. NRS 34.726(1). Appellant’s motion was procedurally barred absent a demonstration of cause for the delay and undue prejudice. *Id.* A defendant may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice. Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). In order to demonstrate a fundamental miscarriage of justice, a defendant must make a colorable showing of actual innocence of the crime or ineligibility for the death penalty. Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

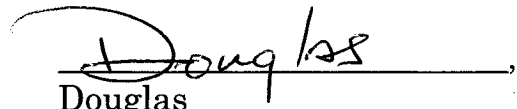
Appellant did not attempt to demonstrate good cause for the delay in his motion. Rather, appellant claimed that he was actually innocent because the witnesses lied. This claim fell short of a demonstration of actual innocence, and thus, the motion was procedurally barred and without good cause.

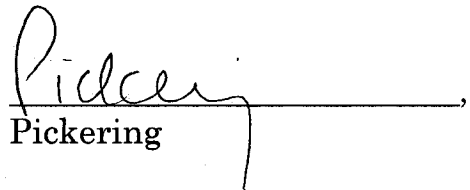
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
William Henry Collier, Jr.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>1</sup>We 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.