

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LEONETTI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52904

FILED

JAN 07 2010

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 dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant raised four issues in his petition: (1) newly discovered evidence demonstrated that he was actually innocent, (2) ineffective assistance of counsel because trial counsel failed to investigate witnesses regarding his actual innocence; (3) ineffective assistance of counsel because trial counsel was mentally incapable of representing him because of disciplinary proceedings against trial counsel; and (4) the prosecution was vindictive and selective and counsel failed to seek "the true evidence of his actual innocence."¹

Appellant's petition, filed on September 9, 2008, was untimely because it was filed more than six years after this court issued the

¹Appellant also appeals the district court's denial of his motion for counsel, motion for evidentiary hearing, motion for an investigator, and motion for transportation. We conclude that the district court did not abuse its discretion in denying these motions.

remittitur from his direct appeal on January 29, 2002. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed several petitions for writs of habeas corpus and claim 3 above was previously decided on the merits.² See NRS 34.810(2). Appellant's petition was also an abuse of the writ because claims 1, 2, and 4 above, were new and different from those previously litigated. See id. Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2). However, a petitioner may be entitled to review of defaulted claims if failure to review would result in a fundamental miscarriage of justice. Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

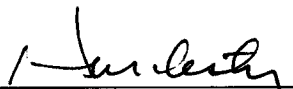
In an attempt to overcome the application of the procedural bars, appellant argued that he was actually innocent because the victim was obsessed with the movie, THE CRUSH (Morgan Creek Productions 1993). The victim's alleged obsession with the movie did not demonstrate actual innocence. Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001) (fundamental miscarriage of justice requires a colorable showing of actual innocence—"more likely than not no reasonable juror would have convicted him absent a constitutional violation"). Appellant otherwise did not attempt to demonstrate good cause or prejudice and did not attempt to

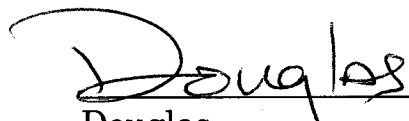
²Appellant unsuccessfully challenged his judgment of conviction and sentence in several post-conviction petitions for writs of habeas corpus and motions to withdraw his guilty plea. Leonetti v. State, Docket No. 47485 (Order of Affirmance, August 7, 2007).

overcome the presumption of statutory laches. Accordingly, the district court did not err by denying the petition as procedurally barred.

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.³


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Jackie Glass, District Judge
Michael Leonetti
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We 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.