

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN LAMONT MITCHELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53942

**FILED**

MAY 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing appellant Sean Lamont Mitchell's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

First, Mitchell contends that the district court abused its discretion by finding that his actual-innocence claim was insufficient to overcome the procedural bars to his petition. A successful actual-innocence claim must demonstrate that "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence." Schlup v. Delo, 513 U.S. 298, 327 (1995); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Mitchell's petition was untimely and successive, see NRS 34.726(1), NRS 34.810(1)(b), (2)-(3), and the district court found that Mitchell's alleged alibi did not amount to new evidence or good cause sufficient to excuse the procedural bars. The district court's factual findings are entitled to deference when reviewed on appeal. See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Mitchell has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover,

Mitchell has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that the district court did not abuse its discretion by rejecting this claim.

Second, Mitchell contends that the district court erred by not finding that his due process rights were violated by the court's failure to serve him with written notice of entry of the order denying his motion to set aside, correct or vacate an illegal sentence. The district court found that Mitchell's claim lacked merit and that he failed to demonstrate prejudice. See Riley, 110 Nev. at 647, 878 P.2d at 278. Mitchell's petition, however, was untimely and successive and, in the absence of good cause, prejudice, or a miscarriage of justice, the district court should have denied the claim on that basis alone. See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court will affirm an order that reaches correct result, even if based upon an incorrect ground).

Having considered Mitchell's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Connie J. Steinheimer, District Judge  
Karla K. Butko  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk