

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK RAMON LARRY A/K/A  
DEREK RAMON LARRY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54147

**FILED**

APR 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 denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant filed his petition on February 24, 2009, more than four years after the judgment of conviction was filed on October 11, 2004.<sup>2</sup> Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus on April 24, 2006.<sup>3</sup> See NRS 34.810(2). Further, appellant's petition constituted an

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<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>2</sup>No direct appeal was taken.

<sup>3</sup>Appellant filed a premature appeal from a previous petition for a writ of habeas corpus, which was dismissed by this court without prejudice for lack of jurisdiction. Larry v. State, Docket No. 47366 (Order *continued on next page . . .*)

abuse of the writ as some claims were new and different from those claims raised in his previous post-conviction petition. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3).

To excuse the procedural defects, appellant claimed that he was not legally trained and trial counsel told him he could not file a direct appeal. That appellant failed to realize the legal or factual support for these claims in a timely fashion did not excuse the delay. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); see generally Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that limited intelligence and lack of trained legal assistance did not constitute good cause for filing a procedurally barred petition). Further, appellant failed to demonstrate that any impediment external to the defense explained or excused the more than four-year delay since the judgment of conviction was filed. Hathaway, 119 Nev. at 252, 71 P.3d at 506; Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). That his trial counsel told him he could not file a direct appeal did not excuse the delay in filing an untimely and successive post-conviction petition for a writ of habeas corpus.

Next, appellant claimed that he was actually innocent. In support of his claim, appellant argued that he was not in the area where the shooting occurred, that the witness' view was obstructed and the witness only identified him out of revenge.

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*... continued*

Dismissing Appeal, July 10, 2006). Appellant did not file an appeal from the district court's subsequent order denying the first petition.

We conclude that appellant failed to demonstrate that a fundamental miscarriage of justice should allow consideration of procedurally defaulted claims because he failed to demonstrate that it is more likely than not that no reasonable juror would have convicted appellant. See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Schlup v. Delo, 513 U.S. 298, 327 (1995). Appellant failed to provide any support for his claim of actual innocence. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that “bare” or “naked” claims are insufficient to grant relief). Therefore, appellant failed to demonstrate that this claim should excuse the procedural defects, and the district court did not err in applying the procedural bars in this case.

Having considered appellant’s contentions and concluding that they are without merit, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

<sup>4</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.

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Derrick R. Larry  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk