

IN THE SUPREME COURT OF THE STATE OF NEVADA

SPENCER LAVERN ANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54263

FILED

APR 08 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 appellant's post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on April 1, 2009, nearly ten years after this court issued the remittitur from his direct appeal on May 18, 1999.² Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.³ See

¹This 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).

²Anderson v. State, Docket No. 28679 (Order Dismissing Appeal, April 20, 1999).

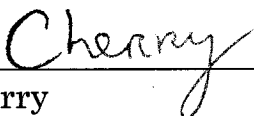
³See Anderson v. State, Docket No. 42017 (Order of Affirmance, January 10, 2005).

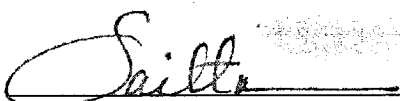
NRS 34.810(1)(b)(2); NRS 34.810(2). To the extent appellant raised claims that were new and different from those raised in his previous petition, those claims were an abuse of the writ. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(1)(b); 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).


Appellant failed to demonstrate any impediment external to the defense sufficient to establish good cause for his delay in filing his petition. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). That appellant sought to exhaust claims in order to proceed federally did not provide good cause. See generally Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). Appellant's claim that he was actually innocent also lacked merit. Beyond his own self-serving allegations that he was innocent, that the State committed prosecutorial misconduct, and that the victim perjured her testimony, appellant failed to provide any facts to establish that "it is more likely than not that no reasonable juror would have convicted [appellant]." See Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Thus appellant failed to establish a fundamental miscarriage of justice would result from this court's failure to consider his claims. We further conclude that appellant failed to

overcome the presumption of prejudice to the State pursuant to NRS 34.800(2). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

⁴To the extent appellant also argued that his sentence was illegal, his sentence was facially legal and appellant failed to demonstrate that the district court was not a court of competent jurisdiction. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996); see also NRS 199.480; NRS 200.380; NRS 207.010. Appellant also failed to identify any mistaken assumptions about his criminal record which worked to his extreme detriment. Edwards, 112 Nev. at 708, 918 P.2d at 324. Therefore, the district court did not err in denying this claim.

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. Elissa F. Cadish, District Judge
Spencer Lavern Anderson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk