


IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK LEE STEESE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54344

FILED

NOV 05 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on April 7, 2009, nearly 11 years after this court's June 9, 1998, issuance of the remittitur from his direct appeal. See Steese v. State, 114 Nev. 479, 960 P.2d 321 (1998). Appellant's petition is therefore untimely filed. See NRS 34.726(1). It is also successive and an abuse of the writ.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Thus, appellant's petition is procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Further, because the State specifically pleaded laches, appellant is required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

¹See Steese v. State, No. 35404 (Order Affirming in Part, Reversing in Part and Remanding, January 21, 2003) (appellant did not appeal the denial of his petition after remand); Steese v. State, No. 43553 (Order of Affirmance, November 24, 2004).

Appellant does not argue that he has good cause, but rather that his procedural defects should be excused because he is actually innocent. When a petitioner raises constitutional claims that are otherwise procedurally barred, he may overcome those bars and have his claims decided on the merits if he presents new, reliable evidence of his innocence that erodes confidence in the outcome of the trial. Schlup v. Delo, 513 U.S. 298, 316 (1995); Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). In rejecting appellant's actual-innocence claim, the district court improperly conflated the constitutional-claim and new-evidence requirements, denying appellant's petition as procedurally barred because the new evidence did not itself implicate a constitutional violation. Here, appellant's petition raises several claims of constitutional error, and he presents new evidence that, if reliable, may erode confidence in the trial's outcome. Appellant is therefore entitled to an evidentiary hearing on his actual-innocence claims. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that appellants are entitled to evidentiary hearings where they make specific factual allegations that, if true, would entitle them to relief).

At the evidentiary hearing, the district court must determine whether appellant's new evidence is reliable and, if so, whether appellant has demonstrated that, in light of all the evidence, "it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt." Schlup, 513 U.S. at 327; accord Pellegrini, 117 Nev. at 887, 34 P.3d at 537. The district court must consider the credibility of affiant Robert Steese and weigh the evidence presented at trial in light of the new evidence in order to determine if appellant met his burden of proof. See Schlup, 513 U.S. at 330. Finally, if the district court

determines that appellant's evidence demonstrates actual innocence, appellant has overcome the procedural bar, and the district court must address on the merits the constitutional claims raised in appellant's petition, again starting with whether appellant is entitled to an evidentiary hearing on those claims.

For the foregoing reasons, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²

Hardesty, J.
Hardesty

Douglas, J.
Douglas

*Pickering*¹, J.
Pickering

²Because we are reversing the decision and remanding this case to the district court, we need not address appellant's arguments regarding the phone records and statements of R. Rock.

Further, appellant's request for post-conviction genetic marker (DNA) analysis must be pursued through the provisions of NRS 176.0918. All other requests for discovery raised in the petition should be pursued through motions filed with the district court.

cc: Hon. Elissa F. Cadish, District Judge
Eighth District Court Clerk
Attorney General/Carson City
Clark County District Attorney
Federal Public Defender/Las Vegas