


IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER WILFRED HUDON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54448

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's "motion to dismiss and vacate."¹ Third Judicial District Court, Lyon County; William Rogers, Judge.

Appellant filed his motion on January 6, 2009, nearly seven years after this court's January 25, 2002, issuance of the remittitur from his direct appeal. See Hudon v. State, Docket No. 36897 (Order Affirming in Part, Reversing in Part and Remanding, December 14, 2001). Appellant's motion was therefore untimely filed. See NRS 34.726(1). Appellant's motion was successive as he had previously pursued a post-

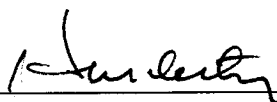
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

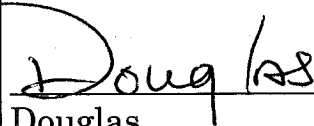
Because of the nature of relief sought, the district court properly construed appellant's motion as a post-conviction petition for writ of habeas corpus. See NRS 34.724(2)(b).


conviction petition for writ of habeas corpus.² See NRS 34.810(1)(b)(2); NRS 34.810(2). His motion was also an abuse of the writ. See id. Appellant's motion was therefore procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(1)(b)(2); 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 did not attempt to demonstrate good cause to excuse his procedural infirmities. Further, appellant failed to overcome the presumption of prejudice pursuant to NRS 34.800(2). Finally, appellant failed to demonstrate actual innocence because he did not show that it is more likely than not that no reasonable juror would have convicted him in light of new evidence. Calderon v. Thompson, 523 U.S. 538, 559 (1998); 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). We therefore conclude the district court did not err in denying appellant's motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

²See Hudon v. Warden, Docket No. 41240 (Order of Affirmance, December 13, 2004).

cc: Hon. William Rogers, District Judge
Roger Wilfred Hudon
Attorney General/Carson City
Lyon County District Attorney
Lyon County Clerk