


IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE CLIFTON CARTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54798

FILED

DEC 10 2010

FRANCIS K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Appellant filed his petition on March 21, 2008, approximately six years after issuance of the remittitur on direct appeal on October 6, 1998. Carter v. State, Docket No. 32028 (Order of Affirmance, September 14, 1998). 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, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was 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). Moreover, because the State specifically

¹Carter v. State, Docket No. 36919 (Order of Affirmance, November 5, 2001).

pleaded laches, appellant was required to overcome the rebuttable presumption of laches. NRS 34.800(2).

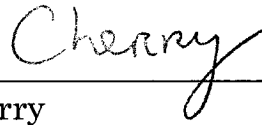
First, appellant claims that he has good cause to raise a challenge to the deadly weapon enhancement because he is timely from this court's decision in State v. Dist. Ct. (Pullin), 124 Nev. 564, 188 P.3d 1079 (2008). Appellant fails to demonstrate good cause because the decision in Pullin did not create a legal basis that was not previously available to appellant. Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998). Appellant also fails to demonstrate an impediment external to the defense. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Further, appellant fails to demonstrate prejudice as he fails to demonstrate that any errors worked to his actual and substantial disadvantage. Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993). Therefore, the district court did not err in determining that Pullin did not provide good cause and prejudice to overcome the procedural bars.

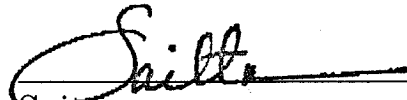
Next, appellant claims that he is actually innocent based on the transition instruction and the voluntary intoxication instruction given at trial. Appellant did not demonstrate actual innocence because these are claims of legal innocence, not factual innocence, and appellant fails to show that "it is 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) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also 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). Further, to the extent that appellant alleges that he was factually innocent because he was intoxicated, appellant failed to demonstrate that no reasonable juror would have convicted him in light of new evidence as evidence of


appellant's intoxication was presented at trial. See Calderon, 523 U.S. at 559 (quoting Shlup, 513 U.S. at 327); see also Pellegrini, 117 Nev. at 887, 34 P.3d at 537; Mazzan, 112 Nev. at 842, 921 P.2d at 922. We therefore conclude that the district court did not err in dismissing the petition as procedurally barred and barred by laches.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

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