

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUILLERMO BELTRAN,
Appellant,
vs.
WARDEN JACK PALMER,
Respondent.

No. 55093

FILED

JUN 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing appellant Guillermo Beltran's untimely post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James E. Wilson, Judge.

Beltran contends that the district court abused its discretion by dismissing his petition as procedurally barred and finding that there was not a fundamental miscarriage of justice to excuse the untimely filing. Beltran's post-conviction petition for a writ of habeas corpus was procedurally barred because it was filed almost two years after the remittitur had issued in his direct appeal. See NRS 34.726(1). In an attempt to overcome the procedural bar, Beltran provided new evidence and argued that a fundamental miscarriage of justice would result if the petition was dismissed because he is actually innocent. See Bousley v. U.S., 523 U.S. 614, 623 (1998) (a petitioner can demonstrate good cause and prejudice to overcome the procedural bar if he demonstrates that he is actually innocent of the underlying crime); Mitchell v. State, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006). The district court found that the new evidence did not prove Beltran's innocence and Beltran failed to

“show that it is more likely than not that no reasonable juror would have convicted him absent a constitutional violation.” Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); see also Bousley, 523 U.S. at 623.

We conclude that Beltran has failed to demonstrate that the district court erred because he failed to provide adequate trial transcripts for this court’s review. See Thomas v. State, 120 Nev. 37, 43 n.4, 83 P.3d 818, 822 n.4 (2004) (an appellant is ultimately responsible for providing this court with portions of the record necessary to resolve his claims on appeal); Bousley, 523 U.S. at 623 (a claim of actual innocence is reviewed “in light of all the evidence” (internal quotation marks omitted)).¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
Eric W. Lerude
Carson City District Attorney
Carson City Clerk

¹Without citing any authority, Beltran requests that this court remand this matter so that he may have an additional opportunity to present evidence in support of his actual innocence claim. We decline this request.