

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN ANTHONY STONE,
Appellant,
vs.
GREG SMITH, WARDEN, NSP AND
THE STATE OF NEVADA,
Respondents.

No. 56083

FILED

NOV 05 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing appellant Kevin Anthony Stone's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Stone contends that the district court abused its discretion by dismissing his petition without conducting an evidentiary hearing and finding that his actual-innocence claim was insufficient to overcome the procedural bars. Stone's petition was untimely and successive, see NRS 34.726(1), NRS 34.810(1)(b)(2), and the district court found that to the extent he raised claims that were new and different from those raised in his previous petitions, the failure to raise them earlier constituted an abuse of the writ, see NRS 34.810(2). The district court also found that Stone's petition "fail[ed] to set forth new or different facts which would warrant a hearing." See Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002); Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Stone failed to demonstrate good cause or prejudice, and our review of the record reveals that the district court did not err by rejecting

his claim of actual innocence, see Schlup v. Delo, 513 U.S. 298, 327 (1995) (a successful actual-innocence claim must demonstrate that “it is more likely than not that no reasonable juror would have convicted him in light of the new evidence”); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Therefore, we conclude that the district court did not abuse its discretion by dismissing Stone’s petition and we

ORDER the judgment of the district court AFFIRMED.¹

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Brent T. Adams, District Judge
Washoe District Court Clerk
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney

¹Stone also contends that the deadly weapon sentence enhancement was improperly imposed and that counsel was ineffective for failing to (1) object to the attempted murder and acquit first transition instructions and (2) obtain sufficient credit for time served. Because Stone failed to overcome the procedural bars to his petition, we need not consider these claims.