

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARION L. NICHOLSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56516

FILED

JAN 13 2011

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant filed his petition on December 15, 2009, more than four years after issuance of the remittitur on direct appeal on May 6, 2005. Nicholson v. State, Docket No. 44461 (Order of Affirmance, April 11, 2005). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had litigated several of his claims in a prior post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised several claims new and different from those raised in his previous petition.² See NRS 34.810(2). Appellant's petition was procedurally barred absent a


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).

²Nicholson v. State, Docket No. 47182 (Order of Affirmance, July 28, 2006).

demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Appellant appeared to argue that his procedural defects should be excused due to equitable tolling and ineffective assistance of counsel. These arguments did not provide good cause as there are no equitable tolling provisions in Nevada and ineffective assistance of counsel claims that are themselves procedurally barred cannot be good cause. NRS 34.726; Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). To the extent that appellant asserted a fundamental miscarriage of justice overcame his procedural defects, appellant did not demonstrate actual innocence because he failed 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). We therefore conclude that the district court did not err in denying appellant's petition as procedurally barred. Accordingly, we


ORDER the judgment of the district court AFFIRMED.

 J.

Saitta

 J.

Hardesty

 J.

Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Darion Nicholson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk