

IN THE SUPREME COURT OF THE STATE OF NEVADA

TYSON ROBINSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56532

FILED

DEC 09 2010

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 an “original writ of habeas corpus, or in the alternative petition for writ of habeas corpus (post-conviction), or in the alternative petition for writ of mandamus, or in the alternative petition for declaratory judgment.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant filed his petition on April 23, 2010, nearly three years after entry of the judgment of conviction on June 29, 2007. Thus, appellant’s petition was untimely filed. See NRS 34.726(1). Moreover, appellant’s petition was an abuse of the writ as he raised claims new and

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).

different from those raised in his previous petition.² See 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(3).

Appellant failed to allege any good cause or actual prejudice to overcome the procedural bars. However, appellant appeared to argue that a fundamental miscarriage of justice should overcome application of the procedural bars. Specifically, he argued that his due process rights had been violated because the laws reproduced in the Nevada Revised Statutes did not contain an enacting clause as required by the Nevada Constitution. Nev. Const. art. 4, § 23. Appellant did not demonstrate a fundamental miscarriage of justice as his arguments fell short of demonstrating actual innocence.³ Calderon v. Thompson, 523 U.S. 538, 559 (1998); 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

²Robinson v. State, Docket No. 51331 (Order of Affirmance, December 2, 2008).

³We note that the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes reproduced those laws as classified, codified, and annotated by the Legislative Counsel. NRS 220.120.

district court did not err in denying appellant's petition as procedurally barred.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry J.
Cherry

Saitta J.
Saitta

Gibbons J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Tyson Robinson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We further conclude that the district court did not err in denying his request for a writ of mandamus or declaratory judgment. NRS 34.170.