

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN A. LAYER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57010

FILED

FEB 09 2011

ORDER OF AFFIRMANCE

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Shoop*
DEPUTY CLERK

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; Doug Smith, Judge.

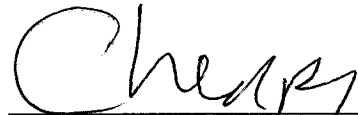
Appellant filed his petition on July 22, 2010, more than one year after entry of the judgment of conviction on April 14, 2009. Thus, appellant's petition was untimely filed and procedurally barred absent a demonstration of cause and undue prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).


In an attempt to overcome the procedural bars, appellant argued that he was actually innocent. 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

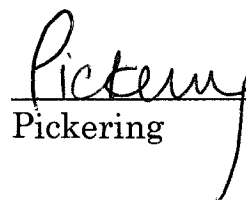
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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). Therefore, 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.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Doug Smith, District Judge
John A. Layer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk