

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LEONETTI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57075

**FILED**

JUL 15 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

Appellant filed his petition on August 23, 2010, more than eight years after issuance of the remittitur on direct appeal on January 29, 2002. Leonetti v. State, Docket No. 36980 (Order Dismissing Appeal, January 2, 2002). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed several post-conviction petitions in which he had raised the claims asserted in the instant petition, and it constituted an abuse of the writ to the extent he raised claims new and different from those raised

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<sup>1</sup>This 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).

in his previous petitions.<sup>2</sup> 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).

In an attempt to overcome application of the procedural bars, appellant claimed he did not receive a fair or complete district court hearing on his previous post-conviction petitions and motions. He further argued that the incomplete nature of the hearings conducted rendered this court unable to perform an appropriate appellate review, indicating that a successive petition was appropriate. We conclude that this claim lacks merit. While this court noted in its order of August 7, 2007, that the district court had not "precisely compl[ie]d" with this court's directives in resolving appellant's multiple post-conviction petitions and motions, we ultimately concluded that a sufficient record existed to review the district court's decisions. Leonetti v. State, Docket No. 47485 (Order of Affirmance, August 7, 2007). This court further concluded that appellant's claims that his guilty plea was invalid and he had received ineffective assistance of counsel lacked merit. Id. Accordingly, any arguments related to the district court evidentiary hearings conducted on these prior claims were barred by the doctrine of law of the case, which "cannot be avoided by a more detailed and precisely focused argument." See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Beyond his claims related to the insufficiency of prior evidentiary hearings, appellant failed


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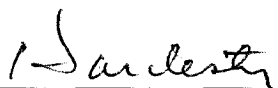
<sup>2</sup>Appellant unsuccessfully challenged his judgment of conviction and sentence in several post-conviction petitions for writs of habeas corpus and motions to withdraw his guilty plea. Leonetti v. State, Docket No. 52904 (Order of Affirmance, January 7, 2010); Leonetti v. State, Docket No. 47485 (Order of Affirmance, August 7, 2007).

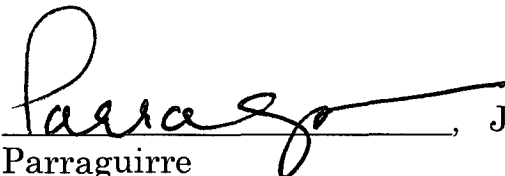
to demonstrate any impediment external to the defense sufficient to establish good cause for his delay in filing his petition. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, we conclude that the district court did not err in denying appellant's petition as procedurally barred.

Finally, to the extent appellant claimed that the procedural bars should be excused because he was actually innocent, appellant failed to make any colorable showing of actual innocence demonstrating 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). Further, to the extent appellant attempted to revive the actual innocence claim raised in his September 9, 2008, petition, this claim was rejected by this court in its order of January 7, 2010, and is barred by the doctrine of law of the case. See Hall, 91 Nev. at 316, 535 P.2d at 799. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Abbi Silver, District Judge  
Michael Leonetti  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk