

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS BALBONI A/K/A THOMAS J.
BALBONI, JR.,
Appellant,
vs.
WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER; AND THE
STATE OF NEVADA,
Respondents.

No. 57262

FILED

JUN 08 2011

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

ORDER OF AFFIRMANCE

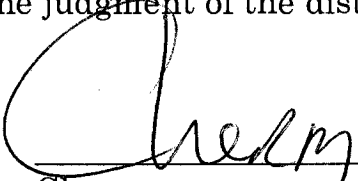
This is an appeal from a district court order dismissing appellant Thomas Balboni's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

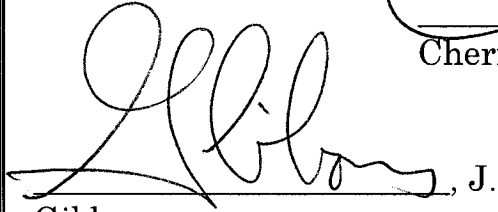
Balboni contends that the district court abused its discretion by dismissing his petition without conducting an evidentiary hearing because (1) his plea was not entered knowingly, intelligently, and voluntarily; (2) trial counsel was ineffective for advising him to plead without conducting a meaningful investigation; (3) appellate counsel was ineffective for failing to challenge the district court's denial of his request for an additional competency evaluation prior to sentencing; and (4) he was actually innocent. We disagree.

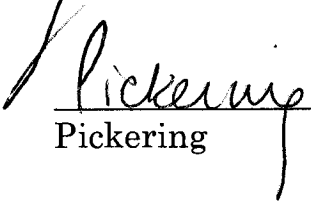
Balboni's petition was untimely, see NRS 34.726(1), and the district court found that he failed to demonstrate good cause and prejudice sufficient to excuse the procedural default. The district court's factual finding is supported by substantial evidence and not clearly wrong. See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Additionally,

our review of the record reveals that Balboni failed to demonstrate actual innocence. See Schlup v. Delo, 513 U.S. 298, 327 (1995) (actual-innocence claim must be accompanied by new and reliable evidence and “show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence”); Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Therefore, we conclude that the district court did not err by dismissing Balboni’s petition without conducting an evidentiary hearing, see Means v. State, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004), and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Steven P. Elliott, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk