

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT L. WATKINS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58341

**FILED**

SEP 15 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
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; Stefany Miley, Judge.

Appellant filed his petition on February 17, 2011, almost fourteen years after issuance of the remittitur on direct appeal on April 15, 1997. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated a post-conviction petition for a writ of habeas corpus. See NRS 34.810(1)(b)(2). Appellant's petition was procedurally barred

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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).

absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice to the State. NRS 34.800(2).

To the extent that appellant claimed ineffective assistance of counsel constituted good cause to excuse his procedural defects, these claims were reasonably available to be raised in a timely petition and ineffective assistance of counsel claims that are themselves procedurally barred cannot establish good cause. NRS 34.726; Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); see also Edwards v. Carpenter, 529 U.S. 446, 453 (2000).

Next, appellant claimed that the United States Supreme Court decision in Melendez-Diaz v. Massachusetts, 557 U.S. \_\_\_, 129 S. Ct. 2527 (2009), provided good cause. Appellant's petition was filed more than one year after entry of the decision in Melendez-Diaz, and thus, the decision in Melendez-Diaz does not provide good cause for the delay in the instant case. Hathaway, 119 Nev. at 252-53, 71 P.3d at 506.

Finally, appellant claimed that actual innocence overcame the procedural defects. Appellant failed to 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,

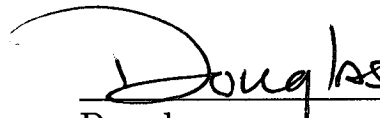
513 U.S. 298, 327 (1995)); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Notably, although the jury was not presented with the reports submitted by appellant with his petition, the jury was informed that no seminal fluid was found in the sexual assault examination. As the sexual assault kit was conducted days after the last sexual contact described by the victim, the report's finding of no DNA evidence would not exonerate appellant of any of the crimes, particularly of the crimes that occurred long before the sexual assault examination.<sup>2</sup> Appellant failed to overcome the presumption of prejudice to the State. We therefore

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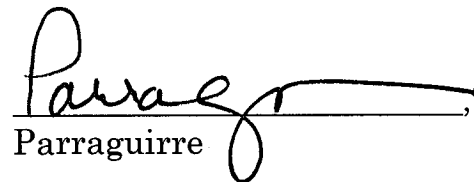
<sup>2</sup>Appellant was charged and convicted of committing four instances of sexual assault on his stepdaughter between 1991 and 1994. The attachment that appears to be a record report on the victim does not relate in any significant way to his claim that he is actually innocent because of the lack of DNA evidence. Even assuming that appellant claimed that this report was new evidence of his innocence, appellant failed to demonstrate that no reasonable juror would have convicted him in light of the new evidence as the jury was presented with testimony from an individual from Child Protective Services that the 1991 case was closed. See id. Finally, the attachment that appears to be a portion of a defense investigator's report also does not relate to his claim that he is actually innocent because of the lack of DNA evidence. Further, two of the individuals named in the report testified at trial, but the district court limited their testimony based on the rape shield law and this court determined on direct appeal that the district court had struck the proper balance in admitting testimony relating to the victim's prior sexual history.

conclude that the district court did not err in denying appellant's petition as procedurally barred and barred by laches. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, J.  
Douglas

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

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

cc: Hon. Stefany Miley, District Judge  
Robert L. Watkins  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.