

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER CUMMINGS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58598

FILED

OCT 05 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.¹ Eighth Judicial District Court, Clark County; Doug Smith, Judge.


Appellant filed his petition on February 16, 2011, more than one year after issuance of the remittitur on direct appeal on February 2, 2010. Cummings v. State, Docket No. 54190 (Order of Affirmance, January 8, 2010). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See id.


Appellant did not attempt to demonstrate cause for the delay in filing his petition. To the extent that appellant claimed that a fundamental miscarriage of justice overcame application of the procedural time bar, appellant did not demonstrate actual innocence because he failed

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).

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). We therefore conclude that the district court did not err in denying appellant's petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Pickering


_____, Sr. J.
Rose


_____, Sr. J.
Shearing

²The Honorables Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.

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.

cc: Hon. Doug Smith, District Judge
Christopher Cummings
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk