IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT N. LEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58865

FILED

FEB 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
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 and an order denying a motion for vindication.[1] Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant filed his petition on July 12, 2010, almost nineteen years after issuance of the remittitur on direct appeal on July 31, 1991. Lee v. State, 107 Nev. 507, 813 P.2d 1010 (1991), and his motion for vindication on March 18, 2011, almost twenty years after issuance of the remittitur on direct appeal.[2] Thus, appellant's petition was untimely filed.[3] See NRS 34.726(1). Moreover, appellant's petition was successive

[1]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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[2]We conclude that the district court did not abuse its discretion in construing appellant's motion to be a post-conviction petition for a writ of habeas corpus. NRS 34.724(2)(b).

[3]Even assuming that the deadline for filing a habeas corpus petition commenced on January 1, 1993, the date of the amendments to NRS

because he had previously litigated several post-conviction petitions raising the same claims.[4] See NRS 34.810(1)(b)(2); 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(1)(b); NRS 34.810(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2). A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice. Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence of the crime. Pellegrini, 117 Nev. at 887, 34 P.3d at 537.

In his petition, appellant acknowledged that all of the grounds had been raised in prior petitions, but claimed that he had good cause because he was providing new facts to support the claims. Appellant's piecemeal litigation is not good cause for overcoming the procedural defects.[5] See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506

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chapter 34, appellant's petition was filed more than 17 years after the effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, §§ 5, 33, at 75-76, 92; Pellegrini v. State, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).

[4]Lee v. State, Docket No. 24230 (Order Dismissing Appeal, August 26, 1993); Lee v. State, Docket No. 46164 (Order of Affirmance, February 24, 2006); Lee v. State, Docket No. 49208 (Order of Affirmance, September 25, 2007).

[5]To the extent that appellant claimed that the State failed to disclose evidence relating to the victim's rental agreement and domestic relationship, appellant failed to provide any facts establishing good cause in the instant case as he failed to demonstrate that the evidence was actually withheld, provide information as to when he learned of the

(2003) (recognizing that good cause must be an impediment external to the defense).

In his petition and motion, appellant claimed that he was actually innocent because: (1) the victim and next-door neighbor misidentified him, (2) his sister would testify that she braided appellant's hair weeks prior to the sexual assault and that appellant's hair was still braided after the sexual assault, contradicting the victim's testimony that her attacker had close-cropped hair, (3) his trial counsel was ineffective in failing to conduct a proper investigation, (4) his right to confront witnesses was denied when hearsay testimony was allowed, (5) his Fourth Amendment rights were violated by a warrantless search, (6) a detective and criminalist tampered with the evidence by planting evidence found in a warrantless search, (7) D. Hunt and K. Fletcher would testify in support of appellant's belief that the State conducted an illegal search, (8) a police officer would testify that she witnessed the detective forcibly cut appellant's braids after arrest, (9) the criminalist provided misleading testimony as set forth in a post-conviction DNA report, and (10) the victim and multiple state witnesses lied.

Appellant previously raised the same arguments of actual innocence in his prior petitions, and this court considered and rejected those arguments. The doctrine of the law of the case prevents further litigation of these arguments and cannot be avoided by a more detailed

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evidence, and failed to demonstrate the evidence was material. See State v. Bennett, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003) (recognizing that when a violation pursuant to Brady v. Maryland, 373 U.S. 83 (1963) is set forth as good cause, the petitioner has the burden of establishing that the State withheld the evidence, that the delay was caused by an impediment external to the defense, and that the evidence was material).

and precisely focused argument. See Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Further, even assuming that appellant raised relevant new facts of actual innocence not previously considered, 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 Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also Pellegrini, 117 Nev. at 887, 34 P.3d at 537; Mazzan, 112 Nev. at 842, 921 P.2d at 922. Thus, appellant failed to overcome the presumption of prejudice to the State. We therefore conclude that the district court did not err in denying appellant's petition and motion as procedurally barred. Accordingly, we

ORDER the judgments of the district court AFFIRMED.[6]

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

[6]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. Michael Villani, District Judge
Albert N. Lee
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk