

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRENT DIRDEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59010

FILED

NOV 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingerson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from orders of the district court denying post-conviction petitions for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant filed his petitions on April 14, 2011, and on June 7, 2011, more than eight years after issuance of the remittitur on direct appeal on November 19, 2002. Dirden v. State, Docket No. 39537 (Order of Affirmance, October 23, 2002). Thus, appellant's petitions were untimely filed. See NRS 34.726(1). Moreover, appellant's petitions were successive because he had previously litigated a post-conviction petition for a writ of habeas corpus, and they constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petitions were procedurally barred absent a demonstration of good cause and actual

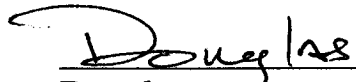
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

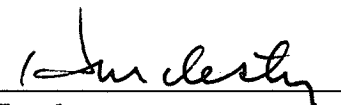
²Dirden v. State, Docket No. 43588 (Order of Remand, June 2, 2005), (Order of Affirmance, January 12, 2006).

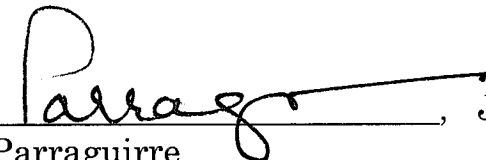
prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

Appellant did not set forth any good cause statement to excuse his procedural defects,³ but rather he argued a fundamental miscarriage of justice should overcome the procedural defects. 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 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 petitions as procedurally barred and barred by laches. Accordingly, we

ORDER the judgments of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

³To the extent that appellant claimed that the procedural bars did not apply, appellant's claim was without merit. Because appellant challenged the validity of his judgment of conviction in his petitions, appellants' petitions were properly construed to be post-conviction petitions for a writ of habeas corpus and were subject to the procedural bars set forth in NRS Chapter 34. NRS 34.720; NRS 34.724(2)(b).

cc: Hon. Michael Villani, District Judge
Trent Dirden
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk