

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER SOUND O'NEILL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59616

**FILED**

JUN 13 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
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> Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant filed his petition on August 24, 2010, more than three years after issuance of the remittitur on direct appeal on April 3, 2007. O'Neill v. State, 123 Nev. 9, 153 P.3d 38 (2007). Appellant's petition was therefore untimely filed. See NRS 34.726(1). Moreover, his petition was successive because he had previously litigated a post-conviction petition for a writ of habeas corpus.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Thus, appellant's petition was procedurally barred absent

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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).

<sup>2</sup>O'Neill v. State, Docket No. 56495 (Order of Affirmance, November 17, 2011).

a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Appellant appeared to claim in his petition that he had good cause to overcome the procedural defects because his counsel was ineffective in failing to challenge the State handwriting expert's testimony or to present alternative expert testimony. Appellant made this same ineffective-assistance argument in his previous petition, and this court considered and rejected his claim that counsel was ineffective for failing to present a handwriting expert at trial. See O'Neill v. State, Docket No. 56495 (Order of Affirmance, November 17, 2011). The doctrine of the law of the case prevents further litigation of this issue. Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Thus, appellant failed to demonstrate good cause.


Appellant also claimed that he had new evidence demonstrating that he was actually innocent. Appellant presented as new evidence a July 21, 2010, letter from a handwriting expert opining that, based on a comparison of the forged checks with the handwriting samples provided by appellant, appellant did not sign the forged checks. Appellant asserted that this evidence contradicts the State handwriting expert's trial testimony that appellant "probably" wrote one of the forged checks, and demonstrates that he did not have knowledge that the checks were forged.

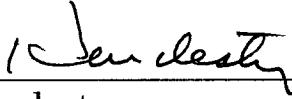
Even assuming that this July 21, 2010, letter constitutes new evidence, appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." Calderon v. Thompson, 523 U.S. 538, 559 (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). The jury was presented with evidence that appellant possessed two forged checks and yellow pages listing check-cashing services and that another forged check and ten blank checks from the same account were found in an envelope in his car. Appellant told the police that he received the checks as collateral for work that he had done, but the account owner denied writing or authorizing the checks. While the July 21, 2010, letter may indicate conflicting expert opinions as to whether appellant actually wrote one of the forged checks, the letter does not demonstrate that appellant was actually innocent of the offense of possession of a forged instrument. Therefore, we conclude that the district court did not err in denying his petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Pickering

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

cc: Hon. Steven P. Elliott, District Judge  
Christopher Sound O'Neill  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk