

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW JAMES KING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59627

FILED

MAY 09 2012

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.¹ Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Appellant filed his petition on June 23, 2011, more than seven years after issuance of the remittitur on direct appeal on November 4, 2003. King v. State, Docket No. 39698 (Order of Affirmance, October 7, 2003). 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, and it constituted an abuse of the writ to the extent that he raised claims new and different from those raised in his previous petition.² See NRS

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).

²King v. State, Docket No. 44239 (Order of Affirmance, February 24, 2005).

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).

Appellant argued that he had good cause because the State did not comply with a 2001 order for discovery. Appellant did not demonstrate that this claim was not reasonably available to be litigated in a timely post-conviction petition for a writ of habeas corpus. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). We note that in his first petition appellant did in fact litigate several claims regarding scientific testing of items collected at the crime scene. Therefore, this argument failed to demonstrate good cause to excuse his procedural defects.

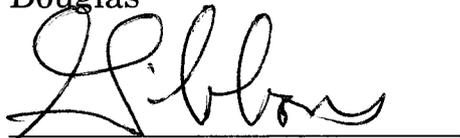
To the extent that appellant claimed that a fundamental miscarriage of justice should overcome application of the procedural bars, appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . 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). Finally, 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 as procedurally barred.³ Accordingly, we

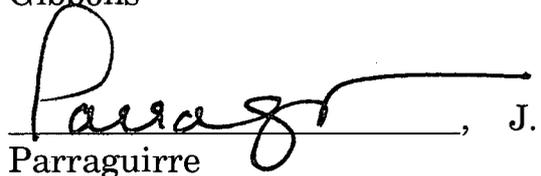
ORDER the judgment of the district court AFFIRMED.⁴

 _____, J.

Douglas

 _____, J.

Gibbons

 _____, J.

Parraguirre

cc: Hon. Valorie J. Vega, District Judge
Matthew James King
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We conclude that the district court did not abuse its discretion in denying appellant's motion for extension of time, request for transcripts from the 2001 hearing, and motion for more definite statement.

⁴We 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.