

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS ANDREW NEWTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59710

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.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.


Appellant filed his petition on March 16, 2011, more than three years after issuance of the remittitur on direct appeal on November 13, 2007. See Newton v. State, Docket No. 49338 (Order of Affirmance, October 18, 2007). 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.² See 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(3).


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).

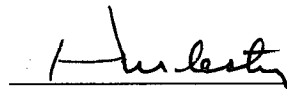
²Appellant did not file an appeal from the order denying his previous petition.

Appellant did not attempt to demonstrate good cause and prejudice. Rather, in an apparent attempt to overcome the procedural bars, appellant claimed that he was actually innocent because the victim provided false information and there was no authority for the issuance of the arrest warrant. However, appellant failed to identify new evidence or provide any support for his conclusory assertion of actual innocence. Thus, appellant 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 petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Kathleen E. Delaney, District Judge
Thomas Andrew Newton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk