

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK ORTIZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59901

**FILED**

DEC 12 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> Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Appellant filed his petition on September 19, 2011, more than fourteen years after entry of the judgment of conviction on April 10, 1997. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of good cause and undue prejudice. See NRS 34.726(1). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

In an attempt to demonstrate good cause, appellant claimed that he filed the petition late because he was unable to obtain a copy of his PSI earlier. Appellant failed to demonstrate good cause because appellant provided the district court with a copy of his PSI in a document filed on April 23, 2010, and he failed to demonstrate why he waited more than a


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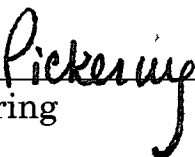
<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

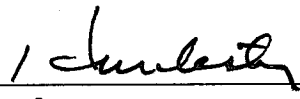
year to raise this claim in the instant petition. Therefore, the district court did not err in denying this claim.

Next, appellant claimed that failure to consider his claims on the merits would result in a fundamental miscarriage of justice. Specifically, he claimed that his sentence is unconstitutional because the victim was 15 years old rather than 16 years old, the district court relied on a faulty misdemeanor conviction listed in the PSI in sentencing him, and he is actually innocent. Appellant failed to demonstrate that failure to consider his claims on the merits regarding sentencing would result in a fundamental miscarriage of justice. Further, 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 petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

<sup>2</sup>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. Valorie J. Vega, District Judge  
Frank Ortiz  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk