

IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENN DARNELL DEAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60654

FILED

NOV 15 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 dismissing a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; J. Charles Thompson, Senior Judge.

Appellant filed his petition on January 30, 2012, over two years after issuance of the remittitur on direct appeal on November 17, 2009. Dean v. State, Docket No. 52769 (Order of Affirmance, October 21, 2009). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different

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).

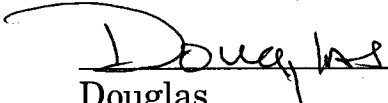
from those raised in his previous petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

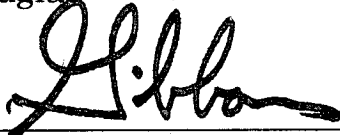
In an attempt to demonstrate good cause, appellant claimed that he was proceeding in proper person and did not have the assistance of counsel in developing his substantive claims. Appellant failed to demonstrate good cause for the procedural defects, as his proper person status is not an impediment external to the defense. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

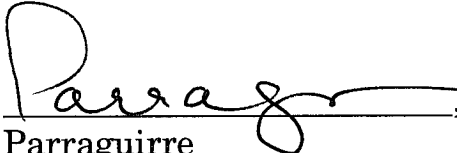
Appellant also claimed that he is actually innocent of first-degree kidnapping. To demonstrate actual innocence, a petitioner must show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Appellant claimed that he had new evidence in the form of (1) a written affidavit, dated July 22, 2011, from his mother, (2) a written affidavit, dated August 19, 2008, from the victim's mother, and (3) sentencing transcripts. These documents do not show that appellant is innocent of first-degree kidnapping. Appellant failed to demonstrate that no reasonable juror would have convicted him in light of new evidence, and thus failed to demonstrate actual innocence.

²Dean v. State, Docket No. 57000 (Order of Affirmance, July 15, 2011).

We therefore conclude that the district court did not err in denying the petition as procedurally barred. Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Chief Judge, Eighth Judicial District Court
Hon. J. Charles Thompson, Senior Judge
Glenn Darnell Dean
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk