

IN THE SUPREME COURT OF THE STATE OF NEVADA

FARRIN HAWKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61047

FILED

MAR 27 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a request for leave to file a successive petition which was treated as a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant filed his petition on April 3, 2012, nearly twenty-three years after issuance of the remittitur on direct appeal on August 8, 1989. *Hawkins v. State*, Docket No. 19272 (Order Dismissing Appeal, July 11, 1989). Thus, appellant's petition was untimely filed. 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).

34.726(1). Moreover, appellant's petition was an abuse of the writ to the extent that he raised claims new and different from those raised in his previous petitions.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). 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 overcome the procedural bars appellant argued that he was actually innocent because he received ineffective assistance of counsel. 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,

²*Hawkins v. State*, Docket No. 39930 (Order of Affirmance, April 17, 2003); *Hawkins v. State*, Docket No. 57787 (Order of Affirmance, June 8, 2011); *Hawkins v. State*, Docket No. 59028 (Order of Affirmance, March 8, 2012). Appellant did not appeal the denial of his first, second, or sixth petitions.

922 (1996). We therefore conclude that the district court did not err in denying appellant's petition.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Michael Villani, District Judge
Farrin Hawkins
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk

³We decline to consider the district court's decision to designate appellant a vexatious litigant and to enter a restrictive order. This decision should be challenged in an original petition for a writ of mandamus filed in this court. *See Peck v. Crouser*, 129 Nev. ___, ___, 295 P.3d 586, 588 (2013).

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.