

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT N. LEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62070

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 denying 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 July 25, 2012, twenty-one years after issuance of the remittitur on direct appeal on August 6, 1991. *Lee v. State*, 107 Nev. 507, 813 P.2d 2010 (1991). Thus, appellant's petition was untimely filed.² See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed five post-conviction petitions for

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 *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²Even assuming that the deadline for filing a habeas corpus petition commenced on January 1, 1993, the date of the amendments to NRS chapter 34, appellant's petition was filed more than 19 years after the effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, §§ 5, 33, at 75-76, 92.

a writ of habeas corpus.³ 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). Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition as procedurally barred for the reasons discussed below.

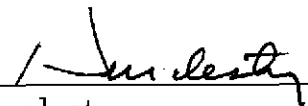
In an attempt to demonstrate good cause to overcome the procedural bars appellant stated that the claims he was raising in his petition were "clear violations of his constitutional rights." Appellant failed to demonstrate good cause because he failed to demonstrate that these claims were not or could not have been raised in a timely petition.


To the extent that appellant claimed that he was actually innocent, appellant raised these claims of actual innocence in his prior petitions, and this court considered and rejected those arguments. The doctrine of law of the case prevents further litigation of these arguments and cannot be avoided by a more detailed and precisely focused argument. See *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Further, even assuming that appellant raised relevant new facts of actual innocence not previously considered, appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that

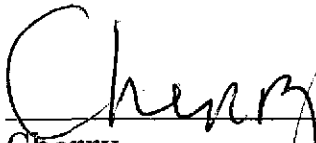
³*Lee v. State*, Docket No. 24230 (Order Dismissing Appeal, August 26, 1993); *Lee v. State*, Docket No. 46164 (Order of Affirmance, February 24, 2006); *Lee v. State*, Docket No. 49208 (Order of Affirmance, September 25, 2007); *Lee v. State*, Docket No. 58865 (Order of Affirmance, February 8, 2012) (affirmed the denial of two petitions).

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). Thus, 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, and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

⁴We 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).

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. Michael Villani, District Judge
Albert N. Lee
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk