

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE JAMES SMITH, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63095

FILED

NOV 14 2013

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; Jessie Elizabeth Walsh, Judge.

Appellant filed his petition on January 11, 2013, more than six years after issuance of the remittitur on direct appeal on April 18, 2006. *Smith v. State*, Docket No. 41309 (Order of Affirmance, March 22, 2006). 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(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally

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).

²*Smith v. State*, Docket No. 47591 (Order of Affirmance, November 17, 2006).

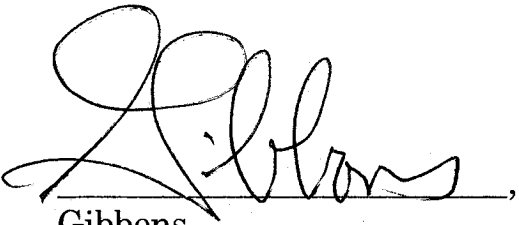
barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).


In an attempt to demonstrate good cause, appellant claimed that he was unable for many years to discover the extent of exculpatory evidence withheld by the State in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Specifically, appellant identified trial testimony of the victim that, when compared to police reports, demonstrated the State withheld knowledge of the victim's perjured testimony. Appellant also claimed that the State withheld a statement made by Carl Mullins, a witness. Appellant failed to demonstrate good cause because he failed to demonstrate exculpatory evidence was withheld from the defense. *See State v. Huebler*, 128 Nev. ___, ___, 275 P.3d 91, 95 (2012) (recognizing that a *Brady* claim raised in an untimely petition requires the petitioner to demonstrate that the State withheld evidence (to demonstrate cause) and to establish that the evidence was material (to demonstrate undue prejudice)). With regard to the perjured testimony, the trial transcripts and police reports were not withheld from the defense as they are a part of the district court record. As for the statement by Mullins, appellant failed to demonstrate that a statement by Mullins was in fact withheld and contained material evidence. Therefore, the district court did not err in denying this good-cause claim.

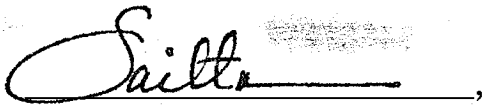
In an attempt to overcome the procedural bars and the presumption of prejudice to the State, appellant claimed that he was actually innocent. Appellant failed to demonstrate actual innocence because he failed to show that "it is more likely than not that no

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 as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.³


Gibbons, J.


Douglas, J.


Saitta, J.

³We 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. Jessie Elizabeth Walsh, District Judge
Willie James Smith, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk