

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMMY LEWIS JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63195

FILED

DEC 17 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
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; Michelle Leavitt, Judge.

Appellant filed his petition on May 3, 2012, more than fourteen years after issuance of the remittitur on direct appeal on July 8, 1997. *Johnson v. State*, Docket No. 27255 (Order Dismissing Appeal, June 17, 1997). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed two post-conviction petitions for a writ of habeas corpus.<sup>2</sup> See NRS 34.810(2). Appellant's petition was procedurally barred absent 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 *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>2</sup>*Johnson v. State*, Docket No. 31133 (Order Dismissing Appeal, June 16, 2000); *Johnson v. State*, Docket No. 38541 (Order of Affirmance, May 23, 2002).

demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Appellant did not attempt to demonstrate good cause to excuse the procedural defects. Instead, appellant argued that he is actually innocent of the attempted murder count, as demonstrated by a codefendant's written declaration that appellant was merely a getaway driver and not a shooter and by the United States District Court's conclusion that appellant was not the shooter. Additionally, relying upon *Sharma v. State*, 118 Nev. 648, 56 P.3d 868 (2002), and *Mitchell v. State*, 122 Nev. 1269, 149 P.3d 33 (2006), appellant claimed that he did not acknowledge a specific intent to kill during the plea bargaining process, as the element was not present in the charging document, and that the absence of proof of such intent in the record demonstrates actual innocence.

As appellant pleaded guilty, he must demonstrate not only that he is factually innocent of the charge to which he pleaded guilty but that he is factually innocent of any more serious charges forgone in the plea bargaining process. *Bousley v. United States*, 523 U.S. 614, 623-24 (1998). Appellant did not address actual innocence relative to the multiple felony charges relinquished by the State during negotiations. Nevertheless, we conclude that appellant failed to demonstrate actual innocence, as his claims related to legal insufficiency and not factual innocence, see *Mitchell*, 122 Nev. at 1273-74, 149 P.3d at 36, and appellant did not show that "it is more likely than not that no reasonable juror

