

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL EUGENE HUBER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63524

FILED

JAN 16 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
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; James M. Bixler, Judge.

Appellant filed his petition on February 6, 2013, nearly seven years after issuance of the remittitur on direct appeal on February 7, 2006.² *Huber v. State*, Docket No. 44800 (Order of Affirmance and Limited Remand to Correct Judgment of Conviction, January 12, 2006). Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Appellant's

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).

²Appellant's petition did not challenge any changes made in the amended judgment of conviction filed on August 15, 2005, or in the second amended judgment of conviction filed on August 13, 2012, and thus the proper measure for filing a timely petition was the issuance of the remittitur from the direct appeal. *See Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Appellant claimed that he had good cause to excuse the delay because he made multiple attempts “to appeal pursuant to a habeas corpus” but was ignored until 2012, when he filed a motion to modify his sentence. Appellant did not explain why he could not file a petition within the one-year time period and failed to demonstrate that an impediment external to the defense excused the procedural defects. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).³

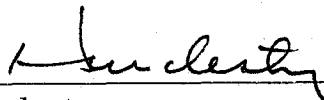
Appellant also attempted to overcome his procedural defects by arguing that he is actually innocent. Appellant did not demonstrate actual innocence because he failed to show that “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.” *Calderon v. 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, 922 (1996).⁴ We therefore conclude that the district

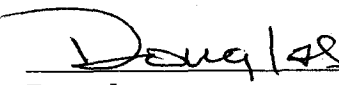
³We note that appellant cited to *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), to support his argument that his petition is not procedurally barred; however, this was his first petition, and therefore it does not appear that *Martinez*, which involves ineffective assistance of post-conviction counsel, is relevant.


⁴To the extent appellant claimed that he was innocent because he was charged with invalid laws in that the Nevada Revised Statutes do not contain an enactment clause as required by the Nevada Constitution, *see Nev. Const. art. 4, § 23*, appellant failed to demonstrate a fundamental miscarriage of justice as his argument fell short of demonstrating actual innocence. *Calderon*, 523 U.S. at 559; *Schlup*, 513 U.S. at 327; *see also continued on next page . . .*

court did not err in denying appellant's petition as procedurally barred.
Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. James M. Bixler, District Judge
Michael Eugene Huber
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

... continued

Pellegrini, 117 Nev. at 887, 34 P.3d at 537; *Mazzan*, 112 Nev. at 842, 921 P.2d at 922.

⁵We 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.