

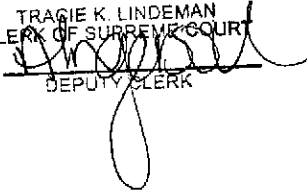
IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCEL D. THOMPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64096

FILED

FEB 13 2014

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
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 Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Appellant filed his petition on July 11, 2013, more than seventeen years after issuance of the remittitur on direct appeal on January 9, 1996. *Thompson v. State*, Docket No. 26129 (Order Dismissing Appeal, December 19, 1995). 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

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*Thompson v. State*, Docket No. 32894 (Order Dismissing Appeal, July 7, 2000). Appellant also filed a petition in 1999, which he voluntarily dismissed, and appellant litigated a procedurally barred petition in 2004.

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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). A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice. *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence of the crime. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).


Appellant did not attempt to demonstrate good cause to excuse the procedural defects. Rather, appellant argued that he was actually innocent because the court did not conduct an out-of-court hearing regarding the victim's hearsay testimony as required by NRS 51.385. Appellant did not demonstrate actual innocence because his claim involved legal error and 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

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Thompson v. State, Docket No. 44707 (Order of Affirmance, April 21, 2005).

court did not err in denying appellant's petition as procedurally barred.³
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Jerome Polaha, District Judge
Marcel D. Thompson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

³The district court incorrectly applied NRS 34.800(2) as the State is required to plead statutory laches pursuant to this provision. Nevertheless, the district court reached the correct result in denying the petition for the reasons discussed above.