

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS ALFREDO GURRY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 64310

**FILED**

**MAR 12 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is a proper person appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on June 26, 2013, more than 19 years after this court issued the remittitur on direct appeal on January 25, 1994. *Echavarria v. State*, 108 Nev. 734, 839 P.2d 589 (1992).<sup>2</sup> 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 writs of habeas corpus,<sup>3</sup> and it constituted an abuse of the writ because he raised new and different claims that could

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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).

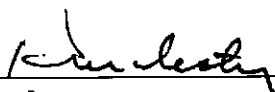
<sup>2</sup>*Echavarria* was appellant's codefendant, and *Echavarria's* and appellant's direct appeals were filed in the same appeal in this court.

<sup>3</sup>See *Gurry v. State*, Docket No. 52185 (Order of Affirmance, July 23, 2009); *Gurry v. State*, Docket No. 27922 (Order Dismissing Appeal, December 20, 1996).

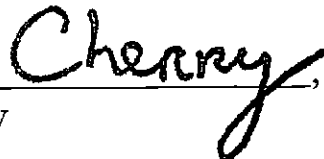
have been raised in his previous petitions. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Further, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).

Instead of claiming good cause and actual prejudice, appellant attempted to overcome the procedural bars and the presumption of prejudice to the State by asserting that he is actually innocent. However, 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). Accordingly, we 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.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Elissa F. Cadish, District Judge  
Carlos Alfredo Gurry  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk