

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAUNDRAY GASTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64314

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.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant filed his petition on June 26, 2013, more than 17 years after this court issued the remittitur on direct appeal on March 20, 1996. Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed five post-conviction petitions for writs of habeas corpus.² *See* NRS 34.810(1)(b). Appellant's petition was procedurally barred absent a

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).

²We reviewed the district court orders denying Gaston's first four habeas petitions. *See Gaston v. State*, Docket No. 56130 (Order of Affirmance, November 12, 2010); *Gaston v. State*, Docket No. 52768 (Order of Affirmance, November 3, 2009); *Gaston v. State*, Docket No. 41096 (Order of Affirmance, December 3, 2003); *Gaston v. State*, Docket No. 33153 (Order Dismissing Appeal, August 16, 2000).

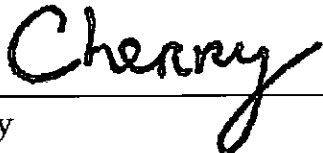
demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1). Further, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).

Appellant made no attempt to demonstrate the good cause and actual prejudice necessary to overcome the procedural bars and the presumption of prejudice to the State. To the extent that appellant claimed that he was actually innocent, 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. Michael Villani, District Judge
DeAundray Gaston
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk