

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT HOLMES, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67460

FILED

JUN 16 2015

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying an untimely post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Appellant Robert Holmes, III filed his petition on November 24, 2014, more than 4 years after issuance of the remittitur on direct appeal on August 9, 2010. *Holmes v. State*, Docket No. 54095 (Order of Affirmance, May 7, 2010). Thus, Holmes' petition was untimely filed. See NRS 34.726(1). Moreover, Holmes' petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition. See NRS 34.810(2). Holmes'

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude 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).

15-9000653

petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).


First, Holmes claimed he had good cause because newly discovered evidence indicated one of the detectives assigned to his case may have used a false name. Holmes failed to demonstrate good cause because this claim could have been raised in a timely petition. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Further, he failed to demonstrate prejudice because he failed to show he would not have pleaded guilty had he known about this evidence. Therefore, the district court did not err in denying this claim.

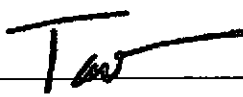
Next, Holmes claimed he could overcome the procedural bars because he was actually innocent. Holmes did not demonstrate actual innocence because he failed to show that “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.” *Calderon v. Thompson*, 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). Therefore, the district court did not err in denying this claim.

Finally, Holmes claimed the district court lacked jurisdiction over his case based on his claim that the detective used a false name and because there was no evidence a crime was committed. Holmes’ claim failed to implicate the jurisdiction of the district court. *See Nev. Const.*

art. 6, § 6; NRS 171.010. We therefore conclude that the district court did not err in denying Holmes' petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kerry Louise Earley, District Judge
Robert Holmes, III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk