

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY L. HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67545 ✓

GREGORY L. HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67734

FILED

AUG 25 2015

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

ORDER OF AFFIRMANCE

These are appeals from an order of the district court denying a post-conviction petition for a writ of habeas corpus as procedurally barred.¹ Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge. We elect to consolidate these appeals for dispositional purposes only. *See* NRAP 3(b)(2).²

¹In the notice of appeal in Docket No. 67734, Harris states he is also appealing from a March 17, 2015, district court order denying his motion to stay the habeas corpus proceedings. No statute or court rule provides for an appeal from that order, therefore we lack jurisdiction to review a challenge to that order. *See Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990).

²These appeals have 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).

Appellant Gregory Harris filed his petition on December 17, 2014, more than ten years after issuance of the remittitur on direct appeal on June 2, 2004. Thus, Harris' petition was untimely filed. See NRS 34.726(1). Moreover, Harris' petition was successive because he had previously filed four post-conviction petitions 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 petitions.³ See NRS 34.810(1)(b)(2); NRS 34.810(2). Harris' 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). Moreover, because the State specifically pleaded laches, Harris was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

First, Harris claimed *Nguyen v. Curry*, 736 F.3d 1287 (9th Cir. 2013), which discussed and applied the U.S. Supreme Court's decision in *Martinez v. Ryan*, 566 U.S. ___, 132 S. Ct. 1309 (2012), provided good cause to excuse his procedural defects. Because the Nevada Supreme Court has held that *Martinez* does not apply to Nevada's statutory post-conviction procedures, see *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871-72 (2014), the *Nguyen* court's discussion and application of the same issues as *Martinez* does not provide Harris good cause for the filing of this late and successive petition.


Second, Harris claimed the procedural bars should not apply because he is actually innocent. To prove actual innocence as a gateway to

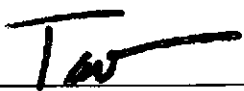
³*Harris. State*, Docket No. 64137 (Order Dismissing Appeal, October 23, 2013); *Harris v. State*, Docket No. 62706 (Order of Affirmance, September 19, 2013); *Harris v. State*, Docket No. 59238 (Order of Affirmance, January 12, 2012); *Harris. State*, Docket No. 44781 (Order Dismissing Appeal, April 1, 2005).


reach procedurally-barred constitutional claims of error, a petitioner must 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 *Schulp v. Delo*, 513 U.S. 298, 327 (1995)). Harris asserted the search was illegal and inadequate evidence was presented to support charges for possession of a weapon and possession of a controlled substance.⁴ His claim that the search was illegal was reasonably available to be raised in a timely petition, see *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003), and he failed to identify new evidence to support his claim of actual innocence.

Finally, Harris failed to overcome the presumption of prejudice to the State. Therefore, we conclude the district court did not err in denying the petition, and we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

⁴We note Harris was not charged with or convicted of either offense.

⁵We further conclude the district court did not err by denying Harris' motion for appointment of counsel and motion for leave to file a supplemental petition. To the extent the motion for leave to file a supplemental petition could be construed as a motion to correct an illegal sentence, we conclude the district court did not err in denying the motion. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

cc: Hon. Kerry Louise Earley, District Judge
Gregory L. Harris
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk