

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAYMOND GENE PHENIX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68061

FILED

OCT 20 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant Raymond Phenix's February 2, 2015, petition was untimely because it was filed more than sixteen years after the Nevada Supreme Court issued the remittitur on direct appeal on March 17, 1998.² See NRS 34.726(1). Phenix's petition was also successive because he has previously filed numerous post-conviction petitions for writs of habeas

¹This appeal has been submitted for decision without oral argument, see 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).

²*Phenix v. State*, 114 Nev. 116, 954 P.2d 739 (1998).

corpus and his first petition was denied on the merits.³ See NRS 34.810(2). Consequently, Phenix's petition was procedurally barred absent a showing of good cause and actual prejudice. See NRS 34.726(1); NSA 34.810(3).

In his petition and motion to amend the petition, Phenix suggests good cause exists to excuse his procedural default because he received ineffective assistance of appellate counsel and the Nevada Supreme Court overlooked three of his direct appeal claims. However, these good-cause claims are themselves procedurally barred because they were reasonably available during the statutory period for filing a timely petition. See *Hathaway v. State*, 119 Nev. 248, 253, 71 P.3d 503, 506 (2003). Accordingly, Phenix failed to demonstrate good cause.


Phenix also claims he is actually innocent because the State failed to prove that he was at the crime scene at the time of the murder; the State lost or withheld evidence; and the police, the prosecutors, and the jury did not follow the law. "To be credible, a claim of actual innocence must be based on reliable evidence not presented at trial," *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 324 (1995)), and, to demonstrate actual innocence of the underlying crime, a petitioner must show "it is more likely than not that no reasonable juror would have convicted him in light of the new

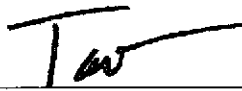
³See *Phenix v. State*, Docket No. 40730 (Order of Affirmance, January 27, 2004); *Phenix v. State*, Docket No. 39467 (Order of Affirmance, October 15, 2002); *Phenix v. State*, Docket Nos. 33543, 34063, 34601 (Order of Affirmance and Dismissing Appeal, April 10, 2001).

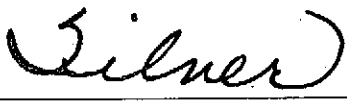
evidence," *id.* (quoting *Schulp*, 513 U.S. at 327). As Phenix did not present any new, reliable evidence in support of his claim of actual innocence, he failed to make a colorable showing of actual innocence.

We conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Raymond Gene Phenix
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We have reviewed all documents Phenix has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Phenix has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.