

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FELTON L. MATTHEWS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67854

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 motion to withdraw a guilty plea.¹ Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

We conclude the district court properly construed appellant Felton Matthews' February 27, 2015, motion as a post-conviction petition for a writ of habeas corpus. *See Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 628 (2014) (holding motions to withdraw a guilty plea should be construed as post-conviction petitions for writs of habeas corpus because post-conviction petitions for writs of habeas corpus provide the exclusive remedy a challenge to the validity of a guilty plea made after sentencing).

Matthews' motion was untimely because it was filed more than eleven years after the Nevada Supreme Court issued the remittitur

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).

on direct appeal on August 5, 2003.² See NRS 34.726(1). Matthews' motion was also successive because he has previously filed numerous post-conviction petitions for writs of habeas corpus.³ See NRS 34.810(2). Consequently, Matthews' motion was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Matthews claimed he had good cause to overcome the procedural bars because he recently discovered that the district attorney who prosecuted his case was indicted on federal corruption charges and the indictment supports his claim of a governmental conspiracy to keep him incarcerated. However, Matthews failed to demonstrate the district attorney was indicted and the existence of a governmental conspiracy or explain how the alleged indictment excused his procedurally defaulted motion. Accordingly, Matthews failed to demonstrate good cause.

Matthews also claimed he was actually innocent because the warrant affidavit revealed the victim stated that "nothing happened" and the victim later "changed her story and [the] alleged sexual acts during a time [when he] was working two jobs [and] trying to start a business." A colorable showing of actual innocence may overcome the procedural bars

²See *Matthews v. State*, Docket No. 39717 (Order of Affirmance, July 9, 2003).

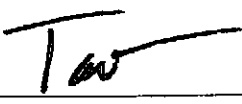
³See *Matthews v. State*, Docket No. 59247 (Order of Affirmance, January 18, 2012); *Matthews v. State*, Docket No. 53552 (Order of Affirmance, October 21, 2009); *Matthews v. State*, Docket No. 52582 (Order of Affirmance, August 21, 2009); *Matthews v. State*, Docket No. 50871 (Order of Affirmance, August 12, 2008); *Matthews v. State*, Docket No. 47145 (Order of Affirmance, October 3, 2006); *Matthews v. State*, Docket No. 43822 (Order of Affirmance, March 10, 2005).

under the fundamental miscarriage of justice standard. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). However, Matthews has not made a colorable showing of 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) (emphasis added) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537; *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Accordingly, Matthews failed to demonstrate he is entitled to relief under the fundamental-miscarriage-of-justice standard.

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

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

⁴We have reviewed all documents Matthews has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Matthews 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.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Felton L. Matthews, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk