


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK ROBERT COLLINS, A/K/A
MARTIN ROBERT COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68559

FILED

NOV 19 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus and an order denying a postconviction motion to withdraw the guilty plea.¹ Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Mark Collins filed his postconviction petition for a writ of habeas corpus on January 6, 2015, more than four years after entry of the judgment of conviction on September 2, 2010. Thus, Collins' petition was untimely filed.² See NRS 34.726(1). Collins' petition was procedurally barred absent a demonstration of good cause. See NRS 34.726(1).

Collins claimed he had good cause to excuse the procedural bar because he was represented by counsel at all times and counsel did not inform him that his convictions violate the Double Jeopardy Clause or that

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

²No direct appeal was taken.

he could have raised this claim at other stages.³ This claim of ineffective assistance of counsel was reasonably available to be raised in a timely petition; therefore, he failed to demonstrate an impediment external to the defense prevented him from complying with the procedural bar. See *Hathaway v. State*, 119 Nev. 248, 253, 71 P.3d 503, 506 (2003) (a claim that is “reasonably available to the petitioner during the statutory time period would not constitute good cause to excuse the delay”).

Collins also claimed that he was actually innocent because his counsel failed to argue that the indictment and amended indictment were facially invalid because they violate the Double Jeopardy Clause. To prove actual innocence as a gateway to reach procedurally-barred constitutional claims of error, a petitioner must show “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)) (emphasis added). Because Collins did not identify any new evidence to support his claim of actual innocence he failed to demonstrate good cause to overcome the procedural bar.


Because Collins failed to demonstrate good cause to overcome the procedural bar, we conclude the district court did not err by denying the petition as procedurally barred.

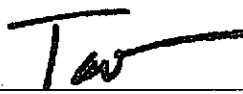
On June 23, 2015, Collins filed a postconviction motion to withdraw his guilty plea. The district court determined that Collins did

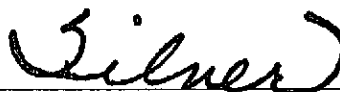
³To the extent Collins asserts he had good cause because his counsel did not file a direct appeal, this claim has already been rejected by the Nevada Supreme Court and is therefore barred by the law of the case. See *Collins v State*, Docket No. 64433 (Order of Affirmance, April 10, 2014); *Hall v. State*, 91 Nev. 314, 535 P.2d 797 (1975).

not follow the proper procedure for attempting to withdraw his guilty plea and denied the motion. *See Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 628 (2014) (holding that “a postconviction petition for a writ of habeas corpus provides the exclusive remedy for a challenge to the validity of the guilty plea made after sentencing for persons in custody on the conviction being challenged”). We conclude the district court did not err by denying the motion. Therefore, we

ORDER the judgments of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Susan Johnson, District Judge
Mark Robert Collins
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴In light of this order, no action will be taken on Collins’ motion to withdraw his appeal from the order denying his motion to withdraw the guilty plea.