

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN ROBERT HALVERSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68335

**FILED**

NOV 19 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 postconviction petition for a writ of a habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant Steven Halverson's March 16, 2015, petition was untimely because it was filed more than six years after the Nevada Supreme Court issued the remittitur on direct appeal on February 17, 2009.<sup>2</sup> See NRS 34.726(1). Halverson's petition was also successive because he had previously filed three postconviction petitions for writs of habeas corpus, and his first petition was denied on the merits.<sup>3</sup>

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<sup>1</sup>This 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).

<sup>2</sup>See *Halverson v. State*, Docket No. 50821 (Order of Affirmance, January 22, 2009).

<sup>3</sup>See *Halverson v. State*, Docket No. 54992 (Order of Affirmance, May 7, 2010); *Halverson v. State*, Docket No. 52000 (Order of Affirmance, April 21, 2009). Halverson did not appeal from the denial of his third habeas petition.

Consequently, Halverson's petition was procedurally barred absent a showing of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).


In an attempt to overcome the procedural bars to his petition, Halverson argued the dying declaration of his wife and codefendant, Renee Myers, was new evidence and demonstrated his innocence.

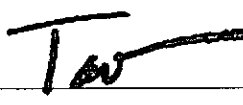
A colorable showing of actual innocence may overcome procedural bars under the fundamental miscarriage of justice standard. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). "To be credible, a claim of actual innocence must be based on reliable evidence not presented at trial." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schulp v. Delo*, 513 U.S. 298, 324 (1995)). And, to demonstrate actual innocence of the underlying crime, the petitioner must show "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence' presented in his habeas petition." *Id.* (quoting *Schulp*, 513 U.S. at 327).

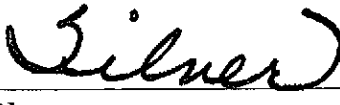
Here, the district court determined the typed letter purporting to be the dying declaration of Renee Myers was insufficient to establish a claim of actual innocence. The district court found the letter lacked any indicia of reliability and, even if it could be admitted into evidence as a dying declaration, it was belied by the evidence received by the grand jury and would not have convinced a reasonable juror not to convict Halverson. The record on appeal supports the district court's findings, and we

conclude the district court did not err by denying Halverson's habeas petition as procedurally barred.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Steven Robert Halverson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>4</sup>To the extent Halverson claims the U.S. Supreme Court's holding in *Martinez v. Ryan*, 566 U.S. \_\_\_, 132 S. Ct. 1309 (2012), provides good cause to overcome his procedural defects, his claim lacks merit because the Nevada Supreme Court has determined *Martinez* does not apply to Nevada's statutory postconviction procedures. See *Brown v. McDaniel*, 130 Nev. \_\_\_, \_\_\_, 331 P.3d 867, 871-72 (2014).

<sup>5</sup>We also conclude the district court did not abuse its discretion by denying Halverson's motion for the appointment of counsel. We have reviewed all documents Halverson has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Halverson 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.