

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY ALLEN HATFIELD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68078

GREGORY ALLEN HATFIELD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68079 ✓

FILED

NOV 19 2015

FRACIE K. LYNDEMAN
CLERK OF SUPREME COURT
CLERK

GREGORY ALLEN HATFIELD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68080

ORDER OF AFFIRMANCE

These are appeals from a single district court order dismissing a postconviction petition for a writ of habeas corpus that was filed in district court case numbers CR 6022 (Docket No. 68078), PC 6022 (Docket

No. 68079), and CR 5117A (Docket No. 68080).¹ Fifth Judicial District Court, Nye County; Robert W. Lane, Judge. We elect to consolidate these appeals for dispositional purposes. NRAP 3(b)(2).

Docket Nos. 68078 and 68079

Appellant Gregory Hatfield filed his petition on April 30, 2015, six years after issuance of the remittitur on direct appeal on March 10, 2009, in district court case number CR 6022. *Hatfield v. State*, Docket No. 51719 (Order of Affirmance, February 11, 2009). Thus, Hatfield's petition was untimely filed. See NRS 34.726(1). Moreover, Hatfield's petition was successive because he had previously filed three postconviction 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.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Hatfield's 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).

Hatfield argued that he had good cause to excuse the procedural defects because this was his "first and sole appeal of CR 5117A", his prior counsel failed to incorporate CR 5117A into his earlier petitions, he did not get the record in CR 5117A released to him until

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).

²*Hatfield v. State*, Docket No. 66480 (Order of Affirmance, January 15, 2015); *Hatfield v. LeGrand*, Docket No. 62684 (Order of Affirmance, September 16, 2014); *Hatfield v. Warden*, Docket No. 57351 (Order of Affirmance, September 15, 2011).

January 29, 2015, and he qualifies for equitable tolling. Hatfield also argued that he was actually innocent of battery with the use of a deadly weapon because the jury acquitted him in CR 5117A of felon in possession of a firearm.

Hatfield failed to demonstrate good cause to excuse the procedural defects. As Hatfield notes, he was acquitted of the charge in CR 5117A and any facts relating to that acquittal were known to him at the time of his acquittal. Thus, he has not demonstrated that an impediment external to the defense prevented him from raising his claims in a timely petition. Further, the Nevada Supreme Court has rejected federal equitable tolling because the plain language of NRS 34.726 “requires a petitioner to demonstrate a legal excuse for any delay in filing a petition.” *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871-72 (2014). Finally, Hatfield failed to demonstrate 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) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)) (emphasis added). We therefore conclude that the district court did not err in dismissing the petition as procedurally barred in district court cases CR 6022 and PC 6022.

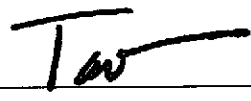
Docket No. 68080


The district court summarily dismissed the April 30, 2015, petition filed in district court case number CR 5117A because Hatfield was acquitted of the charge in that case. We conclude the district court did not err by summarily dismissing the petition in CR 5117A. See NRS 34.724(1).

Because we conclude the district court did not err by dismissing the petition, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Robert W. Lane, District Judge
Gregory Allen Hatfield
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

³We have reviewed all documents Hatfield has submitted in Docket No. 68080, and we conclude no relief based upon those submissions is warranted. To the extent Hatfield 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.