


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEITH DAVID HOUSTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67172

FILED

DEC 17 2015

TRAMIE K. LINDEMAN  
CLERK OF APPEALS COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.<sup>1</sup> First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant Keith Houston filed his petition on June 6, 2014, a memorandum of points and authorities in support of the petition on October 23, 2014, and a supplemental petition on November 19, 2014, more than 30 years after entry of the judgment of conviction on February 14, 1983. Thus, Houston's petition was untimely filed.<sup>2</sup> See NRS 34.726(1). Houston's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See *id.* Moreover, because the State specifically pleaded laches, Houston

---

<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>The deadline for filing a habeas corpus petition pursuant to NRS 34.726 commenced on January 1, 1993, the date of the amendments to NRS chapter 34. See 1991 Nev. Stat., ch. 44, §§ 5, 33, at 75-76, 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001). Houston's petition was filed more than 20 years after the effective date of NRS 34.726.

was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

Houston argued he had good cause to overcome the procedural bar because he is innocent and his plea was not knowingly, intelligently, and voluntarily entered since the charges he pleaded guilty to were not the same as those charged in the original information. He also asserted that, because he initially pleaded not guilty, he was required to be tried by a jury and he could not, thereafter, change his plea to guilty. Finally, he argued that failure to review his claims would result in a fundamental miscarriage of justice.

Houston failed to demonstrate actual innocence to overcome the procedural bar because he failed to 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)). Moreover, Houston's challenge to the validity of his plea could have been raised in a timely petition and he failed to demonstrate that failure to consider his claims would result in a fundamental miscarriage of justice. *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Therefore, we conclude Houston failed to demonstrate good cause to overcome the procedural bar and the district court did not err by dismissing the petition as procedurally barred.<sup>3</sup>

---


<sup>3</sup>In dismissing Houston's petition, the district court found that the petition was procedurally barred under NRS 34.810(2) because the petition was successive. Although Houston had previously filed numerous post-conviction petitions for a writ of habeas corpus, see *Houston v. State*, Docket No. 40652 (Order of Affirmance, November 14, 2003); *Houston v. State*, Docket No. 36271 (Order of Affirmance, August 7, 2001); *Houston v. Warden*, Docket No. 22706 (Order Dismissing Appeal, December 30, 1991), none of the claims raised in the petitions were determined on the merits and, therefore, this petition was not successive. See NRS 34.810(2).

*continued on next page...*

The district court concluded Houston's petition was also barred by the doctrine of laches, finding that the State was prejudiced by the delay in the filing of the petition and Houston did not overcome the prejudice to the State. This finding is amply supported by the record, and we conclude the district court did not err in concluding the petition was barred by the doctrine of laches. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

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

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

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

cc: Hon. James Todd Russell, District Judge  
Keith David Houston  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk

---

*...continued*

Nevertheless, the petition was still procedurally barred under NRS 34.726(1).

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