

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES DERRICK HUNDLEY,
Appellant,
vs.
ROBERT LEGRAND, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 68037

FILED

DEC 29 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting the State's motion to dismiss a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant James Hundley filed his petition on June 19, 2014, more than 15 years after the Nevada Supreme Court issued the remittitur on direct appeal on May 18, 1999.¹ Therefore, Jefferson's petition was untimely and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1).

In his petition and supplemental petition, Hundley claimed good cause existed to excuse his procedural default because he directed appellate counsel to send all of his legal mail to his parents; prior to 2005, he reasonably believed his parents were pursuing postconviction relief on his behalf; and, after 2005, he was emotionally distraught and

¹*Hundley v. State*, Docket No. 29307 (Order Dismissing Appeal, April 21, 1999).

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compromised after learning no petition had been filed.² However, Hundley failed to demonstrate an impediment external to the defense prevented him from complying with the procedural rules. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); see generally *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding a petitioner's claim of organic brain damage, borderline mental retardation, and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause to excuse a procedural default). Accordingly, Hundley failed to demonstrate good cause.


Hundley also claimed he is actually innocent because insufficient evidence supports his convictions and he was deprived of effective assistance of trial and appellate counsel. "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 *Schlup v. Delo*, 513 U.S. 298, 324 (1995)), and, to demonstrate actual innocence of the underlying crime, a petitioner must show "it is more likely than not that no reasonable juror would have convinced him in light of the new evidence presented in his habeas petition," *id.* (quoting *Schlup*, 513 U.S. at 327). As Hundley did not present any new, reliable evidence in support of his claim of actual innocence, he failed to make a colorable showing of actual innocence.

²Hundley also claimed his lack of adequate access to the prison law library constituted good cause. However, this claim was rejected in *Hundley v. State*, Docket No. 62936 (Order of Affirmance, September 19, 2013), and the ruling in that appeal is now the law of the case. See *Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975).

We conclude Hundley's petition was procedurally barred and the district court did not err by denying the petition without an evidentiary hearing. *See Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008) (explaining a petitioner is only entitled to an evidentiary hearing if he has asserted specific factual allegations that are not belied or repelled by the record and, if true, would entitle him to relief). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Janet J. Berry, District Judge
Law Offices of Lyn E. Beggs, PLLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk