

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS ALFREDO GURRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68144

FILED

FEB 10 2016

FRANCIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from an order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on January 26, 2015, 21 years after remittitur issued from his direct appeal on January 25, 1994. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was also successive because he had previously sought postconviction relief,² and it constituted an abuse of the writ to the extent it raised new and different claims. See NRS 34.810(2). Appellant's petition was therefore procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1). Further, because the State

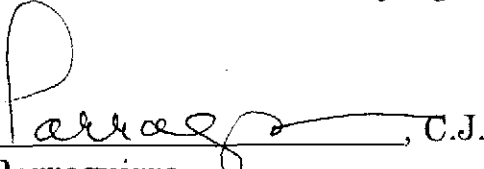
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and additional briefing is unwarranted. See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).


²*Gurry v. State*, Docket No. 27922 (Order Dismissing Appeal, December 20, 1996); *Gurry v. State*, Docket No. 52185 (Order of Affirmance, July 23, 2009); *Gurry v. State*, Docket No. 64310 (Order of Affirmance, March 12, 2014).

pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(1), (2).

Appellant contends that the district court erred by denying his petition because he is actually innocent. See *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996) (recognizing that procedurally defaulted claims may be considered if a petitioner demonstrates he is actually innocent). Appellant fails to demonstrate that the district court erred by denying his petition because he fails to demonstrate that he is actually innocent. See *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (explaining that a claim of actual innocence must be based on new evidence); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Appellant also fails to demonstrate that the district court erred by rejecting the various motions he filed incident to the petition, see *Mazzan v. State*, 109 Nev. 1067, 1070, 863 P.2d 1035, 1036 (1993) (“This court may look to general civil or criminal rules for guidance only when the statutes governing habeas proceedings have not addressed the issue presented.”), and his motion for the appointment of counsel, see NRS 34.750. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

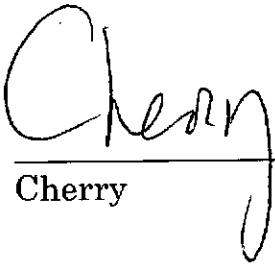

Parraguirre, C.J.


Douglas, J.

³We have received the documents submitted by appellant in this matter on June 30, 2015, August 17, 2015, and September 22, 2015, and conclude that no relief is warranted based upon these submissions.

CHERRY, J., concurring:

I concur.


_____, J.
Cherry

cc: Hon. Elissa F. Cadish, District Judge
Carlos Alfredo Gurry
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk