

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY ALLEN HATFIELD,
Appellant,
vs.
WILLIAM SANDIE, WARDEN,
LOVELOCK CORRECTIONAL
FACILITY,
Respondent.

No. 70249

FILED

SEP 21 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a “Petition for Writ of Habeas Corpus of (an Illegal Sentence).”¹ Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant Gregory Allen Hatfield claims the district court erred by denying his petition. In his petition, Hatfield alleged that he was actually innocent and his trial and appellate counsel were ineffective. Because Hatfield challenged the validity of his conviction and sentence, the district court correctly construed the petition as a post-conviction petition for a writ of habeas corpus. *See* NRS 34.724(2)(b) (providing that the postconviction petition for a writ of habeas corpus “[c]omprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them.”).

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

Hatfield filed his petition on September 14, 2015, more than six years after issuance of the remittitur on direct appeal on March 10, 2009. *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 four 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).

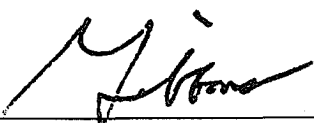
Hatfield argued that he is actually innocent of being a habitual criminal due to an ambiguity in NRS 207 *et seq.* To prove actual innocence as a gateway to reach procedurally-barred constitutional claims of error, a petitioner must show that "it is more likely than not that no reasonable juror would 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)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

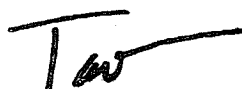
The district court found that Hatfield failed to identify any new evidence of his innocence and dismissed the petition as procedurally


²*Hatfield v. State*, Docket Nos. 68078, 68079, 68080 (Order of Affirmance, November 19, 2015); *Hatfield v. State*, Docket Nos. 66480 & 66489 (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).

barred. We conclude the district court did err by dismissing Hatfield's petition as procedurally barred, and 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 further note Hatfield's claim of actual innocence lacked merit. Contrary to Hatfield's assertion, there is no ambiguity in NRS 207 *et seq.* because NRS 207.010 is distinct from NRS 207.012 and NRS 207.014 and, therefore, the provisions of NRS 207.012(2) and NRS 207.014(2) do not apply to, and did not subsume, NRS 207.010. NRS 207.010(2) gives the prosecutor discretion to charge, and gives the district court discretion to dismiss, a count of habitual criminal under NRS 207.010(1). Contrarily, if a defendant has the requisite number of prior felony convictions for offenses listed in NRS 207.012(2) or NRS 207.014(2), the prosecutor must file a count for habitual felon under NRS 207.012 or for habitual fraudulent felon under NRS 207.014 and the district court may not dismiss such a count. NRS 207.012(2)-(3); NRS 207.014(2)-(3). Because Hatfield was adjudicated a habitual criminal under NRS 207.010(1), the fact his prior convictions are not among those enumerated in NRS 207.012(2) or NRS 207.014(2) is of no import and did not divest the district court of jurisdiction to adjudicate Hatfield a habitual criminal.