

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIE JAMES SMITH, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70010

**FILED**

OCT 19 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant Willie Smith, Jr. filed his petition on September 8, 2015, nine years after issuance of the remittitur on direct appeal on April 18, 2006. *Smith v. State*, Docket No. 41309 (Order of Affirmance, March 22, 2006). Thus, Smith's petition was untimely filed. See NRS 34.726(1). Moreover, Smith's petition was successive because he had previously filed two 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

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

raised in his previous petitions.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Smith'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).


Smith argues the district court erred by denying his claim of actual innocence. Smith claims because he was actually innocent of the crime of possession of stolen property, he could overcome the procedural bars. Smith did not 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)); 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). Smith also failed to demonstrate he was actually innocent based on subsequent case law. See *Vosgien v. Persson*, 742 F.3d 1131, 1134 (9th Cir. 2014) ("One way a petitioner can demonstrate actual innocence is to show in light of subsequent case law that he cannot, as a legal matter, have committed the alleged crime."). Further, to the extent Smith raised claims of actual innocence that were previously raised and denied, the doctrine of the law of the case bars further litigation of these claims and "cannot be avoided by a more detailed and precisely focused argument." *Hall v. State*,


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<sup>2</sup>*Smith v. State*, Docket No. 63095 (Order of Affirmance, November 14, 2013); *Smith v. State*, Docket No. 47591 (Order of Affirmance, November 17, 2006).

91 Nev. 314, 316, 535 P.2d 797, 799 (1975). We therefore conclude the district court did not err in denying Smith's petition, and we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

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

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Willie James Smith, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>We have considered the pro se letter filed on June 1, 2016, when resolving this appeal. To the extent Smith requests copies of the district court record, we deny the request. Smith should seek copies of the district court record from the district court.