

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HORACE CALVIN HOUSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69629

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.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.


Appellant Horace Houston filed his petition on October 28, 2015, 11 years after issuance of the remittitur on direct appeal on September 22, 2004. *See Houston v. State*, Docket Nos. 42011, 42046 (Order of Affirmance, August 27, 2004). Thus, Houston's petition was untimely filed. *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 was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).


Houston claims the district court erred by denying his claim he was actually innocent, which was raised in his petition below in an attempt to overcome the procedural bars. The district court concluded appellant failed to demonstrate he was actually innocent because he failed

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

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). The district court's decision is supported by the record and we conclude the district court did not err in denying Houston's actual innocence claim. Further, Houston failed to overcome the presumption of prejudice to the State. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²To the extent Houston argues he has good cause to overcome the procedural bars because his legal materials were confiscated by prison officials, he never received his file from counsel, he is entitled to equitable tolling, he was a special education student in high school, he was denied adequate access to the law library, and he was not sent a copy of his direct appeal, these claims were not raised in his petition filed in the district court, and we decline to address them on appeal in the first instance. See *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004).

We also conclude the district court did not abuse its discretion by failing to appoint counsel to represent Houston in this matter. See NRS 34.750(1).

cc: Hon. Kathleen E. Delaney, District Judge
Horace Calvin Houston
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk