

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGELO FERGUSEN A/K/A ANGELO
FERGUSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73172

FILED

MAR 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Angelo Ferguson appeals from an order of the district court dismissing the postconviction petition for a writ of habeas corpus he filed on April 4, 2017.¹ Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.


Ferguson filed his petition nearly two years after issuance of the remittitur on direct appeal on May 13, 2015. *See Ferguson v. State*, Docket No. 64665 (Order of Affirmance, April 15, 2015). Thus, Ferguson's petition was untimely filed. *See* NRS 34.726(1). Ferguson's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*


In his petition, it appears Ferguson claimed he could overcome the procedural bar because he was actually innocent. Ferguson 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)

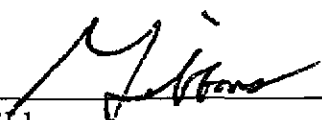
¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

(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). We therefore conclude the district court did not err by dismissing Ferguson's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jennifer P. Togliatti, District Judge
Angelo Ferguson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We note it appears Ferguson filed a timely postconviction petition for a writ of habeas corpus on April 14, 2016. Based on the record before this court, it does not appear the district court has resolved this petition.