

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW CORZINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73713

FILED

JUN 13 2018

ELIZABETH A. BROWN
CLERK OF APPELLATE COURT
BY: *Elizabeth A. Brown*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Matthew Corzine appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 30, 2017.¹ Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Corzine filed his petition more than ten years after entry of the judgment of conviction on February 5, 2007, and more than nine years after entry of the amended judgment of conviction on August 2, 2007. No direct appeal was taken. Corzine's petition was therefore untimely filed and procedurally barred absent a demonstration of good cause, *see* NRS 34.726(1), or that he has suffered a fundamental miscarriage of justice, *see Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Further, because the State specifically pleaded laches, Corzine was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).

Corzine did not claim good cause. Instead, he argued he was actually innocent such that a failure to consider his claims on the merits

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

would result in a fundamental miscarriage of justice. To demonstrate a fundamental miscarriage of justice, Corzine had to present new, reliable evidence demonstrating that “it is more likely than not that no reasonable juror would have convicted him in light of the new evidence.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

Corzine claimed he was actually innocent and his confession to the sexual assaults was false and made in the hope he would be arrested by police and thus escape the physical abuse inflicted on him while he was in the military. In support of his claim, Corzine submitted his military medical records and cited to them in his petition. The records support his claims that he had suicidal thoughts and suffered a physical attack in his unit upon his January 31, 2005, release from the hospital. However, the records also supported Corzine’s statement that he returned to the hospital the following day and was kept there for his safety until he was discharged from the military. Corzine called Las Vegas police to confess 16 days after his readmission to the hospital—where he was safe from his unit and in the process of being discharged from the military. Corzine did not explain, and his records do not indicate, why he would have felt compelled at that time to falsely confess to escape a nullified danger. Accordingly, Corzine failed to show his new evidence demonstrated his actual innocence.

Finally, in addition to failing to demonstrate a fundamental miscarriage of justice, Corzine failed to demonstrate why he could not have had knowledge of his own medical records or obtained copies of them through reasonable diligence, all before the circumstances prejudicial to the State occurred. We therefore conclude Corzine did not overcome the presumption of prejudice to the State that arose out of his exceedingly late

filing. See NRS 34.800. Accordingly, we cannot conclude the district court erred by denying Corzine's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

Silver, C.J.

Silver

Tao, J.

Tao

Gibbons, J.

Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Matthew Corzine
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk