

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN THOMAS KIZZIAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68161

FILED

DEC 16 2015

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

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; J. Charles Thompson, Senior Judge.

Appellant filed his postconviction petition on December 10, 2014, approximately seven years after issuance of remittitur on direct appeal on April 17, 2007. *Kizziar v. State*, Docket No. 47809 (Order of Affirmance, March 22, 2007). Therefore, the petition was untimely filed. *See* NRS 34.726(1). Additionally, his petition was successive as he previously sought postconviction relief.² *See* NRS 34.810(1)(b)(2). His 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). Appellant failed to demonstrate good cause to overcome the


¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).


²*Kizziar v. State*, Docket No. 52146 (Order of Affirmance, December 4, 2009).

procedural default. Further, his claim that he is actually innocent lacks merit because he failed to present new evidence establishing that he is actually innocent of his crimes. *See House v. Bell*, 547 U.S. 518, 536-37 (2006). Therefore, we conclude that the district court did not err by denying appellant's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering

cc: Chief Judge, The Eighth Judicial District Court
Hon. J. Charles Thompson, Senior Judge
John Thomas Kizziar
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk