

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DRESDEN MICHAEL WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71062

FILED

APR 19 2017

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

ORDER OF AFFIRMANCE

Appellant Dresden Williams appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on April 2, 2015. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Williams filed his petition more than four years after issuance of the remittitur on direct appeal on December 10, 2010. *See Williams v. State*, Docket No. 54676 (Order of Affirmance, November 15, 2010). Thus, Williams' petition was untimely filed. *See* NRS 34.726(1). Williams' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Williams argues the district court erred by denying his petition as procedurally barred because he demonstrated a fundamental miscarriage of justice because he is actually innocent. Specifically, he claimed he was actually innocent because the State alleged there were two shooters and Williams' two codefendants, Tatum and Jackson, admitted to being the shooters. Therefore, he could not be one of the shooters.


To demonstrate actual innocence as a gateway to overcome the procedural bar, a petitioner must 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 held an evidentiary hearing on Williams’ actual innocence claim. Trial counsel testified he knew Tatum pleaded guilty and Jackson made inculpatory statements. The district court found counsel credible and concluded neither Tatum’s guilty plea nor Jackson’s inculpatory statements were new evidence. Therefore, the district court determined Williams failed to demonstrate a claim of actual innocence to overcome the procedural bar.

Williams failed to provide this court with Tatum’s plea agreement or with Williams’ trial transcripts. “The burden to make a proper appellate record rests on appellant.” *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980). Based on the record before this court and the findings of the district court, we conclude the district court did not err in denying Williams’ claim of actual innocence and did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk