

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PORFIRIO DUARTE-HERRERA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70603

FILED

APR 19 2017

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

ORDER OF AFFIRMANCE

Appellant Porfirio Duarte-Herrera appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on February 29, 2016.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Duarte-Herrera's postconviction habeas petition challenged the judgments of conviction entered in two separate cases: his 2010 Luxor bombing case and his 2011 Home Depot bombing case. Duarte-Herrera's petition was untimely because it was filed more than three years after the remittiturs on direct appeal were issued on May 9, 2012, and October 31, 2011.² See NRS 34.726(1). Duarte-Herrera's petition was also successive

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).

²See *Duarte-Herrera v. State*, Docket No. 58946 (Order Affirming in Part, Reversing in Part, and Remanding, April 12, 2012); *Duarte-Herrera v. State*, Docket No. 55471 (Order of Affirmance, October 5, 2011).

to the extent it challenged his Luxor bombing conviction because he had previously challenged the Luxor bombing conviction in a postconviction habeas petition and the district court decided that petition on the merits.³ See NRS 34.810(2). But, Duarte-Herrera's petition was not successive to the extent it challenged his Home Depot bombing conviction because the district court has yet to rule on his previous postconviction habeas petition challenging that conviction.⁴

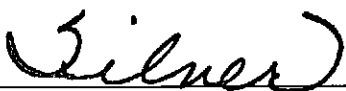
This petition was procedurally barred absent a demonstration of good cause and actual prejudice or that failure to consider these claims would result in a fundamental miscarriage of justice. See NRS 34.726(1); *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 875 (2014). The district court found that Duarte-Herrera failed to show good cause to overcome the procedural bar contained in NRS 34.726(1), and he failed to present any new factual evidence showing he is actually innocent of the crimes. The record supports these factual findings, and we conclude the district court did not err by denying this petition as procedurally barred, see *Brown*, 130 Nev. at ___, 331 P.3d at 875; *State v. Eighth Judicial Dist.*


³See *Duarte-Herrera v. State*, Docket No. 65342 (Order of Affirmance, July 31, 2015).


⁴In the findings of fact, conclusions of law, and order it entered on February 28, 2014, the district court stated, "These findings relate solely to the Luxor bombing, defendant still has an outstanding pro per petition on the Home Depot bombing." Nothing in the record on appeal indicates the district court ever ruled on the outstanding habeas petition.

Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005); *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Porfirio Duarte-Herrera
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁵The district court did not err in denying Duarte-Herrera's petition without appointing counsel or conducting an evidentiary hearing. *See* NRS 34.750(1); NRS 34.770(2).