

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR ROBLES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69511

FILED

SEP 16 2016

FRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

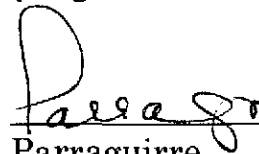
This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

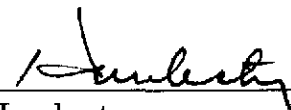
Appellant filed his postconviction petition on August 3, 2015, fourteen years after issuance of the remittitur on direct appeal on July 10, 2001. *Robles v. State*, Docket No. 35198 (Order of Affirmance, June 12, 2001). Therefore, the petition was untimely filed. See NRS 34.726(1). Further, the petition was successive pursuant to NRS 34.810(1)(b) because he previously sought postconviction relief. *Robles v. State*, Docket No. 54313 (Order of Affirmance, March 10, 2010). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(1)(b), (3).

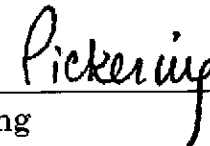
Appellant argues that this court's decision in *Nika v. State*, 124 Nev. 1272, 198 P.3d 839 (2008), provides him good cause to excuse the procedural default because it acknowledged that *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000), represented a change in the law respecting the elements of first-degree murder. He further argues that the delay in filing his petition resulted from the lack of access to a constitutionally adequate prison law library with law clerks who were competent to assist him. See *Bounds v. Smith*, 430 U.S. 817, 828 (1977) (holding that "the fundamental constitutional right of access to the courts requires prison authorities to

assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law” (emphasis added)). However, appellant filed his petition seven years after *Nika* was decided. And while he argues that he had no physical access to the law library, appellant does not assert that he was unable to obtain legal materials.<sup>1</sup> Nor has he established that the lack of a competent law clerk constituted good cause to excuse the procedural bars. See *Phelps v. Director, Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988).<sup>2</sup> Therefore, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C. J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Pickering

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<sup>1</sup>Appellant acknowledges that access to the law library is accomplished through a “paging system.” While he asserts that the “paging system” is unconstitutional, he has not explained how that method denied him adequate access to the library.

<sup>2</sup>Appellant’s contention that he is actually innocent of first-degree murder based on *Nika* appears to be a freestanding claim of actual innocence. Notwithstanding whether such a claim is cognizable in a postconviction petition, his contention lacks merit because even if the jury instruction at issue failed to meaningfully define the elements for first-degree murder, that deficiency would not establish that he is actually innocent of first-degree murder, which requires a showing that he is factually innocent. See *Mitchell v. State*, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006).

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Arthur Robles  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk