

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN DANIEL ORRE,

No. 37353

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**DEC 17 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On July 8, 1999, the district court convicted appellant, pursuant to a guilty plea, of conspiracy to commit robbery (count I) and robbery with the use of a deadly weapon (count II). The district court sentenced appellant to serve a term of 60 months with minimum parole eligibility in 24 months for count I, and two consecutive terms of 180 months with minimum parole eligibility in 72 months for count II, in the Nevada State Prison. Count II was ordered to be served concurrently to count I. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on December 15, 1999.

On May 30, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to

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<sup>1</sup>Orre v. State, Docket No. 34558 (Order Dismissing Appeal, November 19, 1999).

conduct an evidentiary hearing. On September 11, 2000, the district court denied appellant's petition. Appellant did not file an appeal.

On October 17, 2000, appellant filed a proper person post-conviction "motion for leave to proceed to file a writ of habeas corpus pursuant to NRCP 7(b)(y)." The State opposed the motion. The district court treated the motion as a post-conviction petition for a writ of habeas corpus and denied the petition on November 29, 2000. Appellant did not file an appeal.

On December 18, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus and a brief in support of the petition in the district court. On March 20, 2001, the district court denied the petition. This appeal followed.

Appellant filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>2</sup> Moreover, appellant's petition was successive because he had previously filed two post-conviction petitions for writs of habeas corpus.<sup>3</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>4</sup>

In an attempt to excuse his procedural defects, appellant argued that he found newly discovered evidence, and he should be allowed to withdraw his guilty plea. He claimed that he discovered this new evidence when he received his records from his attorney. It appears that appellant is making a claim of actual innocence; however, appellant made factual admissions during the guilty plea canvass.

Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate good cause to excuse the procedural

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<sup>2</sup>See NRS 34.726(1).

<sup>3</sup>See NRS 34.810(2).

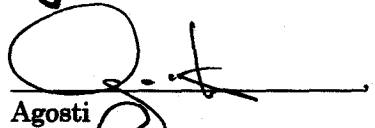
<sup>4</sup>See NRS 34.726(1); NRS 34.810(3).

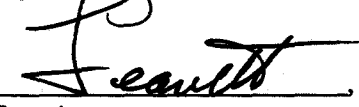
defects. Trial counsel's failure to send appellant his files did not constitute good cause to excuse the procedural default and would not rise to the level of newly discovered evidence.<sup>5</sup> Moreover, appellant has failed to make a credible claim of actual innocence; thus, failing to consider his claims will not result in a fundamental miscarriage of justice.<sup>6</sup> Lastly, the issue of innocence is generally not at issue when seeking to withdraw a guilty plea.<sup>7</sup>

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Young J.

  
Agosti J.

  
Leavitt J.

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Steven Daniel Orre  
Clark County Clerk

<sup>5</sup>See Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

<sup>6</sup>See Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996).

<sup>7</sup>See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984).

<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).