

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARREN MAURICE KING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.


No. 79646-COA

DARREN MAURICE KING,  
Appellant,  
vs.  
THE STATE OF NEVADA; EIGHTH  
JUDICIAL DISTRICT COURT;  
DIRECTOR NDOC; AND CLARK  
COUNTY GRAND JURY,  
Respondents.

No. 79647-COA

**FILED**

APR 27 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Darren Maurice King appeals from an order of the district court filed in district court case number 96C134803 (Docket No. 79646-COA) and district court case number A-19-788446-W (Docket No. 79647-COA) denying a “petition for writ of habeas corpus of actual innocence pursuant to N.R.S. 34.360 to 34.830 inclusive” filed on January 22, 2019. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

King contends the district court erred by denying his petition as procedurally barred. King filed his petition more than 18 years after issuance of the remittitur on direct appeal on June 27, 2000. *See King v. State*, 116 Nev. 349, 998 P.2d 1172 (2000). King’s petition was therefore untimely filed. *See* NRS 34.726(1). His petition was also successive because his claims could have been raised on direct appeal. *See* NRS 34.810(1)(b)(2).

King's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS 34.810(1)(b); or that he was actually innocent such that it would result in a fundamental miscarriage of justice were his claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). Further, because the State specifically pleaded laches, King was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).

King claimed he had good cause to overcome the procedural bars because the State failed to prove the elements of all of the attempted murder charges of which he was convicted and the grand jury lacked the authority to consider these "victimless" crimes. King failed to demonstrate "that the factual or legal basis for [the] claim[s] [were] not reasonably available to counsel, or that some interference by officials, made compliance impracticable." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (internal quotation marks omitted). He thus failed to demonstrate he had good cause to overcome the procedural bars.

King next claimed he had good cause to overcome the procedural bars because the district court lacked subject matter jurisdiction due to the State's aforementioned failure to prove the elements of all of the charges and the grand jury's lack of authority to consider them. King's claims did not implicate the jurisdiction of the district court, *see* Nev. Const. art. 6, § 6; NRS 171.010, and he thus failed to demonstrate he had good cause to overcome the procedural bars.

King also claimed he was actually innocent such that the failure to consider his claims on the merits would result in a fundamental miscarriage of justice. King did not demonstrate actual innocence because he failed to 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 Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Further, King failed to overcome the presumption of prejudice to the State pursuant to NRS 34.800(2). He thus failed to demonstrate a fundamental miscarriage of justice if his claims were not considered on the merits.

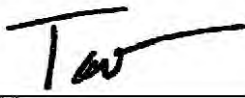
King requested the appointment of postconviction counsel. NRS 34.750(1) provides for the discretionary appointment of postconviction counsel if the petitioner is indigent and the petition is not summarily dismissed. Here, the district court found the petition was procedurally barred pursuant to NRS 34.726(1) and NRS 34.810(1)(b) and declined to appoint counsel. Because the petition was subject to summary dismissal, *see* NRS 34.745(4), we conclude the district court did not abuse its discretion by declining to appoint counsel.

Finally, King argues on appeal that the district court erred by denying his various motions filed in conjunction with and after his postconviction petition without allowing King to appear in person in court. A criminal defendant does not have an unlimited right to be present at every proceeding. *See Gallego v. State*, 117 Nev. 348, 367-68, 23 P.3d 227, 240 (2001), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011). And even where there is a right, a “defendant must show that he was prejudiced by the absence.” *Kirksey v. State*, 112 Nev. 980, 1000, 923 P.2d 1102, 1115 (1996). The record indicates the district court did not conduct a hearing on the motions below, and King does not demonstrate he was prejudiced by his absence in court. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a

petitioner's statutory rights were violated when she was not present at a hearing where testimony and evidence were presented). We therefore conclude the district court did not err in this regard.

Having determined King's arguments lack merit, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Michelle Leavitt, District Judge  
Darren Maurice King  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk