

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR WILLIAMS, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39244

FILED

DEC 04 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY: *J. Ribaut*  
DEPUTY CLERK

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 12, 1984, appellant Oscar Williams, Jr. was convicted, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon. The district court sentenced Williams to serve two consecutive prison terms of life without the possibility of parole. Williams appealed, and this court affirmed his conviction.<sup>1</sup>

On March 23, 1988, Williams, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus. The State opposed the petition, and Williams filed a supplemental petition. After conducting an evidentiary hearing, the district court denied Williams' petition. Williams appealed, and this court affirmed the order of the district court.<sup>2</sup>

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<sup>1</sup>Williams v. State, 103 Nev. 106, 734 P.2d 700 (1987).

<sup>2</sup>Williams, Jr. v. State, Docket No. 19470 (Order Dismissing Appeal, June 29, 1989).

On May 27, 1999, Williams filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition, and Moore filed a reply to the State's opposition. Without conducting an evidentiary hearing, the district court denied Moore's petition. Moore appealed, with the assistance of counsel, and this court affirmed the order of the district court.<sup>3</sup>

On March 23, 2001, Williams, with the assistance of counsel, filed a third post-conviction petition for a writ of habeas corpus, requesting a new trial based on newly discovered evidence. The State opposed the petition, and Williams filed a reply to the State's opposition. After conducting an evidentiary hearing, the district court denied the petition. This appeal followed.

Williams filed his petition approximately fourteen years after this court issued the remittitur from his direct appeal. Thus, Williams' petition was untimely filed.<sup>4</sup> Moreover, Williams' petition was successive because he had previously filed two post-conviction petitions.<sup>5</sup> Williams' petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>6</sup>

In an attempt to excuse his procedural defects, Williams argued that newly discovered evidence established his actual innocence. In particular, Williams claimed that, in March 2001, Inginio Hernandez,

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<sup>3</sup>Williams, Jr. v. State, Docket No. 34857 (Order of Affirmance, December 11, 2000).

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

<sup>5</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2).

<sup>6</sup>See NRS 34.726(1); NRS 34.810(1)(b) NRS 34.810(3).

an individual whom Williams did not know,<sup>7</sup> confessed to the murder of Williams' wife, thereby exonerating Williams who had been convicted of her murder. We conclude that the district court did not err in rejecting Williams' petition.

Even assuming Williams demonstrated cause for failing to discover Hernandez' testimony earlier, Williams has failed to show that he would be prejudiced by the application of the procedural bar.<sup>8</sup> "To avoid application of the procedural bar . . . a petitioner claiming actual innocence must show that it is more likely than not that no reasonable juror would have convicted him absent a constitutional violation."<sup>9</sup> We conclude that Williams failed to make a colorable showing that he was actually innocent of the crime of which he was convicted, or that no reasonable jury would have convicted him had Hernandez testified at his trial.<sup>10</sup>

In the instant case, the district court found that Hernandez' testimony was both suspect and not credible. That finding is supported by

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<sup>7</sup>Although Williams and Hernandez claimed they did not know each other, they were both incarcerated in the same prison where Hernandez was serving a lengthy prison sentence and was unlikely to be paroled in his lifetime.

<sup>8</sup>See Pellegrini v. State, 117 Nev. \_\_\_, \_\_\_, 34 P.3d 519, 537 (2001).

<sup>9</sup>Id.

<sup>10</sup>See id.; see also McLemore v. State, 94 Nev. 237, 239-40, 577 P.2d 871, 872 (1978) (holding that in order for newly discovered evidence to warrant a new trial, the new evidence must indicate that a different result is probable on retrial), modified on other grounds by Sanborn v. State, 107 Nev. 399, 812 P.2d 1279 (1991).

the evidence.<sup>11</sup> In particular, at the evidentiary hearing on Williams' petition, Hernandez recanted his sworn statement that he killed Williams' wife. Instead, Hernandez testified that, although he robbed Williams' wife, it was actually Hernandez' friend who had committed the murder with a .9 millimeter handgun. Afterward, Hernandez and his friend jumped in a car parked in the alley and drove away. When asked about the discrepancy in his statements, Hernandez explained that he confessed to killing Williams' wife under oath merely so he could come to court to testify and clear his guilty conscience for his participation in the robbery.

Additionally, Hernandez' testimony contradicted the trial testimony of several witnesses that: (1) only one man was seen leaving the scene of the shooting, (2) the man fleeing the scene had an "afro" hairstyle, (3) the shooter had run from the alley because he did not have a car parked there; and (4) the gun used in the shooting was .38 caliber. Finally, we note that in Williams' direct appeal, this court previously concluded that there was overwhelming evidence of Williams' guilt presented at his trial, including several eyewitnesses who identified Williams as the individual fleeing from the scene of the shooting, and evidence that, prior to the shooting, Williams had obtained a \$150,000.00 life insurance policy on his wife's life and had attempted to hire an assassin to kill her.<sup>12</sup> Because Hernandez' confession was not credible, we conclude that Williams failed to show a colorable claim of actual innocence. Accordingly, the district court did not err in rejecting his petition.

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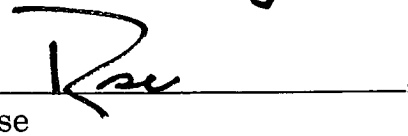
<sup>11</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

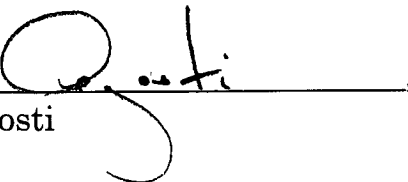
<sup>12</sup>Williams, 103 Nev. at 109-11, 734 P.2d. at 702-03.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Williams is not entitled to relief and that briefing and oral argument are unwarranted.<sup>13</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>14</sup>

 \_\_\_\_\_, C.J.  
Young

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Agosti

cc: Hon. Michael L. Douglas, District Judge  
Oscar Williams Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Clerk

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<sup>13</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>14</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.