

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 40403

FILED

AUG 20 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

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

On August 9, 1985, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. This court affirmed appellant's appeal from his judgment of conviction.<sup>1</sup> The remittitur issued on April 21, 1987.

On March 23, 1988, appellant, with the assistance of counsel, filed a petition for post-conviction relief in the district court. The State opposed the petition. On November 9, 1988, after conducting an evidentiary hearing, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.<sup>2</sup>

On May 27, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

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

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

State opposed the petition. On October 27, 1999, after conducting a hearing, the district court denied the petition. This court affirmed the order of the district court.<sup>3</sup>

On April 23, 2001, appellant, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. After conducting an evidentiary hearing on appellant's claim of actual innocence, the district court denied the petition. This court affirmed the order of the district court.<sup>4</sup>

On August 13, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that the petition was not in the proper form, untimely and successive. Moreover, the State specifically pleaded laches. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On October 29, 2002, the district court dismissed appellant's petition.<sup>5</sup> This appeal followed.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition. Preliminarily, we note that it appears from the existing record that appellant's petition was not verified, as is required by NRS 34.730. An unverified petition for a writ of habeas corpus is not cognizable in the

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

<sup>4</sup>Williams v. State, Docket No. 39244 (Order of Affirmance, December 4, 2002).

<sup>5</sup>Appellant filed a motion for leave to supplement his habeas corpus petition in the district court, and on October 29, 2002, the district court denied appellant's motion. We conclude that the district court did not abuse its discretion in denying appellant's motion. See NRS 34.750(5).

district court.<sup>6</sup> Therefore, the district court did not err in determining that appellant's petition was not in substantial compliance with the requirements of NRS chapter 34.

Moreover, as a separate and independent ground to deny relief, appellant's petition was procedurally barred. Appellant filed his petition more than fifteen years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>7</sup> Moreover, appellant's petition was successive because he had previously filed three post-conviction petitions for relief from his conviction.<sup>8</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>9</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>10</sup> A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.<sup>11</sup>

Appellant did not attempt to excuse his procedural defects. Rather, appellant argued that he was actually innocent of the crime. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse his procedural defects or overcome

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<sup>6</sup>Sheriff v. Scalo, 96 Nev. 776, 616 P.2d 402 (1980); Sheriff v. Arvey, 93 Nev. 72, 560 P.2d 153 (1977).

<sup>7</sup>See NRS 34.726(1).

<sup>8</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2).

<sup>9</sup>See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

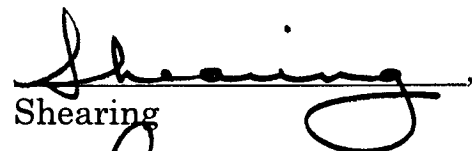
<sup>10</sup>See NRS 34.800(2).


<sup>11</sup>Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

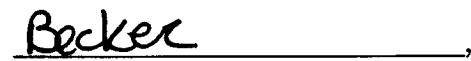
the presumption of prejudice to the State. Moreover, appellant did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice because appellant's claim of actual innocence was not credible. Therefore, we affirm the order of the district court.

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>12</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>13</sup>

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

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

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<sup>12</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>13</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.