

Gregory Scott Hermanski #69140
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Carson City, NV 89702
(Appellant, pro se)

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In the Supreme Court of the State of Nevada

Gregory Scott Hermanski
appellant,

- VS -

No. 65298

The State of Nevada,
respondent.

Petition for Rehearing

Petitioner, Gregory Scott Hermanski, in proper person, hereby petitions this Honorable Court pursuant to Rule 40, Nevada Rules of Appellate Procedure, for rehearing in the above-entitled cause on ground that the Court has apparently overlooked and/or failed to address finding by the district court central to question whether the district court abused it's discretion in denying petition for writ of Habeas Corpus.

In response to the State's motion to dismiss habeas action
petitioner requested that he was entitled to overcome procedural bars
and have his claims heard on the merits based on claim of

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"actual innocence". (See, Petitioner's Opposition to State's Response and Motion to Dismiss Defendant's Petition for Writ of Habeas Corpus and First Amended Petition for Writ of Habeas Corpus," February 19, 2014, at page 7).

However, the district court determined that "Defendant's claim of actual innocence is belied by the record and insufficient to demonstrate that it is more likely than not that no reasonable juror would have convicted him in light of his new evidence". (See, Findings of Facts, Conclusions of Law and Order, April 7, 2014, at page 5).

Petitioner asserts that such finding of fact constitutes an abuse of discretion because petitioner's claim of actual innocence is sufficient to overcome procedural bars, and this Court's decision fails to address such finding of fact which, petitioner asserts, is central to question whether the district court abused its discretion in denying petition for writ of habeas corpus.

Argument

Pursuant to the provisions of Rule 40, Nevada Rules of Appellate Procedure, this Court has the authority to review and reconsider its judgment when it can be demonstrated that said judgment was based on the Court's having "overlooked or misapprehended any issue of fact or law". See, N.R.A.P. 40(c).

Conclusion

Petitioner asserts that his claim of actual innocence is sufficient to overcome procedural bar, and because this court's decision lacks any reference to petitioner's claim of actual innocence or the district court's specific finding with respect to actual innocence claim, it is clear that this Court has overlooked this issue and petitioner is therefore entitled to rehearing on this matter.

Respectfully Submitted,

Gregory S. Hermanski 09/18/14
Gregory Scott Hermanski
(Appellant, pro se).

Certificate of Service

I, Gregory Scott Hermanski, hereby certify pursuant to NRCPS (b) that on this 18th day of September, 2014 I mailed a true and correct copy of the foregoing "Petition for Rehearing", postage fully pre-paid and addressed as follows:

Office of the District Attorney
200 Lewis Ave
P.O. Box 532212
Las Vegas, NV 89155-2212

Gregory S. Hermanski
Gregory Scott Hermanski