

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSCAR A. STANLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66827

FILED

APR 15 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Appellant Oscar Stanley filed his petition on June 29, 2014, more than 10 years after issuance of the remittitur on direct appeal on December 2, 2003. *Stanley v. State*, Docket No. 39775 (Order Affirming in Part, Reversing in Part and Remanding, November 4, 2003). Thus, Stanley's petition was untimely filed. See NRS 34.726(1). Moreover, Stanley's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

previous petition.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Stanley's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Moreover, because the State specifically pleaded laches, Stanley was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

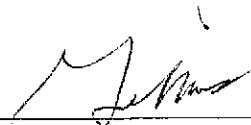
First, Stanley claimed he had good cause because he did not have legal training, lacked an education, and had to rely on inmate law clerks for help with his petition. This claim failed to demonstrate that there was an impediment external to the defense that prevented him from complying with the procedural bars. See *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner's claim of organic brain damage, borderline mental retardation and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post-conviction petition). Stanley also failed to overcome the presumption of prejudice to the State.


Second, Stanley claimed that the procedural bars should not apply because he was actually innocent of being a habitual felon. This claim was reasonably available to be raised in a timely petition. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503 (2003). To prove actual innocence as a gateway to reach procedurally-barred constitutional claims of error, a petitioner must show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new

²*Stanley v. State*, Docket No. 45079 (Order of Affirmance, December 6, 2005).

evidence.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). Stanley’s claim failed to meet that narrow standard. We therefore conclude that the district court did not err in denying Stanley’s petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kathleen E. Delaney, District Judge
Oscar A. Stanley
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk