

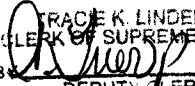
IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH WAYNE DORSEY,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
BILL DONAT,
Respondent.

No. 54575

FILED

JUL 15 2010

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

Appellant filed his petition on February 10, 2009, almost four years after this court's June 14, 2005, issuance of the remittitur from his direct appeal. Dorsey v. State, Docket No. 41900 (Order of Affirmance, March 3, 2005). Appellant's petition is therefore untimely filed. See NRS 34.726(1). Further, appellant's petition is successive as to claims disposed of on the merits in earlier proceedings and an abuse of the writ for claims not raised in his previous petition.¹ NRS 34.810(1)(b)(2); NRS 34.810(2). Thus, appellant's petition is procedurally barred absent a demonstration

¹Dorsey v. State, Docket Nos. 49551 and 50294 (Order of Affirmance, July 11, 2008).

of good cause and prejudice. NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Appellant argues that he has good cause to excuse the procedural bars because he received ineffective assistance of trial and appellate counsel. As appellant's claims of ineffective assistance of trial and appellate counsel are themselves procedurally barred, they do not provide good cause in the instant case.² See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).


Appellant argues that, because he formed the intent to steal only after he entered the building, he is actually innocent of burglary, and the procedural bars are therefore excused. Appellant has not demonstrated actual innocence because he has failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence."³ Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Therefore, appellant failed to demonstrate any fundamental miscarriage of justice to overcome these procedural bars. See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

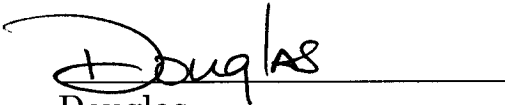
²We decline to consider the merits of his procedurally barred claims.

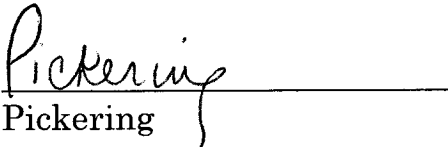
³We note that it is the law of the case that sufficient evidence was presented at trial for the jury to find that appellant had the requisite intent upon entry. See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975); Dorsey v. State, Docket No. 41900 (Order of Affirmance, March 3, 2005).

For the foregoing reasons, we conclude that the district court did not err in denying appellant's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 C.J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Robert H. Perry, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk