

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE JUAREZ CESAR,  
Appellant,  
vs.  
WARDEN, W.S.C.C. AND THE STATE  
OF NEVADA,  
Respondents.

No. 56429

**FILED**

**FEB 09 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

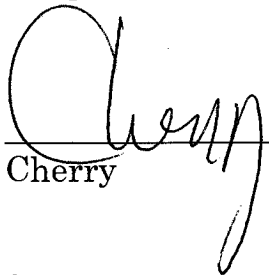
This is an appeal from a district court order dismissing appellant Jose Juarez Cesar's untimely post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.


Cesar claims that the district court erred by dismissing his petition as procedurally barred because a fundamental miscarriage of justice would result from the failure to review his petition on the merits. The record supports the district court's determination that Cesar failed to present any evidence to demonstrate good cause or prejudice to excuse the procedural defects. See NRS 34.726(1). And Cesar has failed to demonstrate that the district court erred by finding that he entered his plea knowingly and intelligently and, therefore, he has not demonstrated that failure to review his petition on the merits would result in a fundamental miscarriage of justice. See Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 526 (2003) ("The fundamental miscarriage of justice standard requires a colorable showing that constitutional error has resulted in the conviction of one who is actually innocent."). Therefore, the district court


did not err by dismissing Cesar's petition as procedurally barred. See State v. Dist. Ct. (Riker), 121 Nev. 225, 233, 112 P.3d 1070, 1074 (2005) (application of the procedural default rules is mandatory).

Cesar also claims that the district court erred by failing to conduct an evidentiary hearing on the merits of one of his claims. Because the petition was procedurally barred, the district court did not err by denying appellant an evidentiary hearing. Passanisi v. Director, Dep't Prisons, 105 Nev. 63, 67, 769 P.2d 72, 75 (1989).

Having concluded that Cesar's claims lack merit, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

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