

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM HENRY COLLIER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63761

FILED

JAN 21 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant filed his post-conviction petition on April 2, 2013, more than nine years after this court issued the remittitur in his direct appeal on November 7, 2003, and he had previously filed a post-conviction petition. Consequently, the petition was untimely under NRS 34.726(1) and successive pursuant to NRS 34.810(1)(b)(2). His petition, therefore, was procedurally barred absent a demonstration of good cause and prejudice. *See* NRS 34.726(1); NRS 34.810(3). And because the State pleaded laches, appellant's petition was barred pursuant to NRS 34.800.

As cause to excuse the procedural default, appellant contends that the filing of an amended judgment of conviction afforded him

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 Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

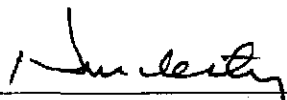
additional time to file his petition and that trial and appellate counsel's ineffectiveness excuses the procedural default. We conclude that appellant failed to demonstrate good cause for the delay in filing his petition. Because the amended judgment of conviction was entered to correct a clerical error, it did not provide good cause for the delay in filing the post-conviction petition. *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 765 (2004) (concluding that an amended judgment of conviction did not provide good cause for the delay in filing a post-conviction petition because the "claims were not related to and did not contest the clerical correction contained in the amended judgment of conviction"). But even if it did, appellant waited nearly two years after the amended judgment of conviction was entered to file his petition. Further, although a claim of ineffective assistance of counsel may provide good cause for the delay in filing a petition, the ineffective-assistance-of-counsel claim itself must not be procedurally defaulted. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Appellant did not explain the delay in raising his claims of ineffective assistance of counsel or why he was unable to present his claims in his previous petition, *see* NRS 34.810(1)(b)(2). Accordingly, we conclude that the district court did not err by denying the petition as procedurally barred.

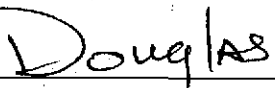
Appellant also argued that the procedural default rules do not apply to his petition because he is actually innocent of the crimes for which he was convicted. When a petitioner cannot demonstrate good cause, the district court may nevertheless excuse a procedural bar if the petitioner demonstrates that failing to consider the petition would result in a fundamental miscarriage of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). A fundamental miscarriage of justice

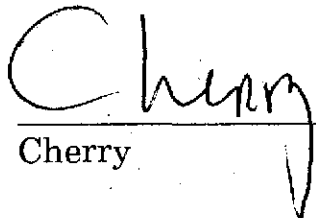
requires "a colorable showing" that the petitioner is "actually innocent of the crime." *Id.* This requires the petitioner to present new evidence of his innocence. *House v. Bell*, 547 U.S. 518, 537 (2006) ("[A] gateway claim requires 'new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.'" (quoting *Schlup v. Delo*, 513 U.S. 298, 324 (1995))). When claiming actual innocence of the crime, the petitioner "must show that it is more likely than not that no reasonable juror would have convicted him absent a constitutional violation." *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. The district court rejected appellant's actual-innocence claim, concluding that that he presented nothing more than bare allegations. Because the record supports the district court's determination, appellant's actual-innocence claim was properly denied. Moreover, none of the claims appellant raised in his petition satisfy actual innocence.

Having considered appellant's arguments and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.

, J.
Hardesty

, J.
Douglas

, J.
Cherry

cc: Hon. Douglas Smith, District Judge
William Henry Collier, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk