

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROGER WILFRED HUDON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66299

FILED

FEB 04 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 Third Judicial District Court, Lyon County; Archie Blake, Judge.

Appellant filed his petition on July 23, 2014, more than 12 years after issuance of the remittitur on direct appeal on January 16, 2002. *Hudon v. State*, Docket No. 36897 (Order Affirming in Part, Reversing in Part and Remanding, December 14, 2001). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed two post-conviction petitions 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 *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

previous petitions.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant'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).


First, appellant appeared to claim he had good cause due to ineffective assistance of post-conviction counsel. Appellant's claim lacked merit as appellant had no statutory right to post-conviction counsel, and thus the ineffective assistance of post-conviction counsel did not provide good cause for an untimely and successive petition. See *McKague v. Warden*, 112 Nev. 159, 164-65 & n.5, 912 P.2d 255, 258 & n.5 (1996); *Crump v. Warden*, 113 Nev. 293, 303 & n.5, 934 P.2d 247, 253 & n.5 (1997); see also *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871 (2014) (explaining that post-conviction counsel's performance does not constitute good cause to excuse the procedural bars unless the appointment of post-conviction counsel was mandated by statute).


Second, appellant claimed he was actually innocent as he believed that the medical evidence failed to show that he caused the victim's death. Appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *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); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922

²*Hudon v. State*, Docket No. 54448 (Order of Affirmance, May 7, 2010); *Hudon v. Warden*, Docket No. 41240 (Order of Affirmance, December 13, 2004).

(1996). We therefore conclude that the district court did not err in denying appellant's petition.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

³We note that the district court referred to the petition as petition for a writ of certiorari in its order denying relief. However, appellant filed a post-conviction petition for a writ of habeas corpus and the district court should have referred to appellant's petition accordingly. As discussed previously, the district court properly denied relief, and therefore, we affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

⁴We have reviewed all documents that appellant has submitted to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Chief Judge, Third Judicial District Court
Hon. Archie Blake, Senior Judge
Roger Wilfred Hudon
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk