

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER DUNCAN, A/K/A  
CURTIS DUNCAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67482

**FILED**

JUL 14 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
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.<sup>1</sup> Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Christopher Duncan filed his petition on November 14, 2014, more than ten years after issuance of the remittitur on direct appeal on March 9, 2014. *Duncan v. State*, Docket No. 42098 (Order of Affirmance and Limited Remand to Correct the Judgment of Conviction). Thus, Duncan's petition was untimely filed. See NRS 34.726(1). Moreover, Duncan'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

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<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude 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).

from those raised in his previous petitions.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Duncan'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, Duncan was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

First, Duncan claimed he had good cause because the State withheld evidence from the medical examiner's notes regarding the victim's time of death. The district court concluded Duncan's claim was belied by the record. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The parties explained on the record during trial that the State had disclosed this information to the defense prior to trial and that the time of death was up to 36 hours before the autopsy. Substantial evidence supports the district court's conclusion to deny relief for this claim.

Second, Duncan asserted the procedural time bar did not apply because NRS 34.726 is unconstitutionally ambiguous. The Nevada Supreme Court has previously held that the procedural bars are constitutional. See *Pellegrini v. State*, 117 Nev. 860, 878, 34 P.3d 519, 531 (2001) (citing *Passanisi v. Dir., Nev. Dep't of Prisons*, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989)). Moreover, NRS 34.726 provides a person of ordinary intelligence fair notice of the regulations governing post-conviction

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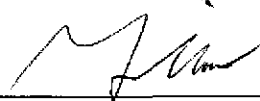
<sup>2</sup>*Duncan v. State*, Docket No. 44435 (Order of Affirmance and Limited Remand to Correct the Judgment of Conviction, March 4, 2005). Duncan did not appeal the denial of his January 7, 2011, petition.


petitions. *See generally State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 553 (2010).

Third, Duncan claimed the procedural bars did not apply because he is actually innocent. Duncan did not demonstrate actual innocence because he failed to show "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 (1996).

Finally, Duncan failed to overcome the presumption of prejudice to the State. We therefore conclude the district court did not err in denying Duncan's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Douglas Smith, District Judge  
Christopher Duncan  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

