

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HUGO ISRAEL CAHUEC,

Petitioner-Appellant,

v.

GREGORY SMITH; ATTORNEY
GENERAL FOR THE STATE OF
NEVADA,

Respondents-Appellees.

No. 14-15593

D.C. No.

3:09-cv-00113-RCJ-RAM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Submitted December 1, 2017**
San Francisco, California

Before: SCHROEDER, D.W. NELSON, and CHRISTEN, Circuit Judges.

Hugo Cahuec, a Nevada state prisoner, appealed the district court's dismissal of his habeas petition on grounds of failure to exhaust and untimeliness. We

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

granted Petitioner's motion to stay appellate proceedings because his threshold actual innocence claim was then pending before the Nevada state courts. The Nevada Supreme Court has now held that the evidence he presented was not reliable and affirmed the trial court's denial of relief.

We have requested, received, and reviewed supplemental briefing from the parties as to the current status of the appeal. The actual innocence claim is now exhausted and the district court has not yet considered it in light of the record developed in state court while this appeal has been pending. We have therefore ordered this appeal submitted on the briefs. We vacate the district court's order denying Petitioner's motion for reconsideration, and remand for the district court to consider the petitioner's claims in the first instance.

We also **GRANT** the pending motion to file the final volume VI of the joint supplemental excerpts of record under seal.

This panel shall retain jurisdiction of any further appeal.

VACATED and REMANDED.