

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM SHROPSHIRE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64037

FILED

FEB 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *D. Malore*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Appellant filed his petition on June 12, 2013, more than three years after entry of the judgment of conviction on October 9, 2009. Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Moreover, appellant's petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² *See* 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(3). A petitioner may be entitled to review of defaulted claims

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


²Appellant did not appeal from the denial of his September 17, 2010, habeas corpus petition.

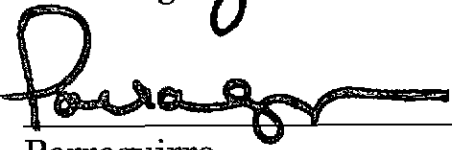
if failure to review the claims would result in a fundamental miscarriage of justice. *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence of the crime. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).


Appellant did not attempt to demonstrate good cause to excuse the procedural defects. Instead, appellant claimed that he is actually innocent of kidnapping as there was insufficient evidence to support the conviction. Preliminarily, we note that a claim of actual innocence by a defendant who pleaded guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), is “essentially academic.” *Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984). Furthermore, as appellant pleaded guilty, he must demonstrate not only that he is factually innocent of the charge to which he pleaded guilty but that he is factually innocent of any more serious charges forgone in the plea bargaining process. *Bousley v. United States*, 523 U.S. 614, 623-24 (1998). Appellant did not address actual innocence relative to the multiple felony charges relinquished by the State during negotiations. Nevertheless, we conclude that appellant failed to demonstrate actual innocence, as his claims related to legal insufficiency and not factual innocence, see *Mitchell v. State*, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006), and appellant did not 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*, 117 Nev. at

887, 34 P.3d at 537; *Mazzan*, 112 Nev. at 842, 921 P.2d at 922.³ Therefore, the district court did not err by denying appellant's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.⁴

 _____, J.
Pickering

 _____, J.
Parraguirre

 _____, J.
Saitta

³To the extent appellant claimed that he had cause to excuse the delay because he was mentally incompetent, he failed to demonstrate that an impediment external to the defense excused his procedural defects. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). The psychological evaluations he presented are not newly discovered evidence, and thus, any claims relating to his competence were reasonably available to be raised in a timely petition. *Id.* at 252-53, 71 P.3d at 506. We also note that appellant was determined to be competent prior to adjudication.

⁴We have reviewed all documents that appellant has submitted in proper person 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: Hon. Michelle Leavitt, District Judge
William Shropshire
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk