

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES H. GREEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66753

**FILED**

**APR 15 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
*Tracie K. Lindeman*  
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; Stefany Miley, Judge.

Appellant James Green filed his petition on August 1, 2014, more than five years after issuance of the remittitur on direct appeal on June 6, 2009. *Green v. State*, Docket No. 51963 (Order of Affirmance, May 13, 2009). Thus, Green's petition was untimely filed. See NRS 34.726(1). Moreover, Green's petition was successive because he had previously filed a post-conviction petition 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 previous petition.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Green's

---

<sup>1</sup>This 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).

<sup>2</sup>*Green v. State*, Docket No. 56549 (Order of Affirmance, January 13, 2011).

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, Green asserts he has good cause to overcome the procedural bars because the State withheld evidence relating to benefits given to a witness in exchange for that witness' testimony. When a claim alleging withheld exculpatory evidence is raised in an untimely and successive post-conviction petition for a writ of habeas corpus, "establishing that the State withheld the evidence demonstrates that the delay was caused by an impediment external to the defense, and establishing that the evidence was material generally demonstrates that the petitioner would be unduly prejudiced if the petition is dismissed as untimely." *State v. Huebler*, 128 Nev. \_\_\_, \_\_\_, 275 P.3d 91, 95 (2012). (footnote omitted) (citing *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003)).


Green failed to demonstrate that an impediment external to the defense prevented him from raising this claim in a timely manner. Green merely speculates that the State gave some benefit to the witness in exchange for that witness' testimony and provided no factual support that the witness actually received a benefit. A bare claim, such as this one, is insufficient to demonstrate that a petitioner is entitled to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).


Moreover, Green failed to demonstrate that any evidence related to the witness' testimony was actually withheld and he failed to demonstrate that this evidence would not have been available to him through diligent investigation by the defense. See *Huebler*, 128 Nev. at \_\_\_ n.11, 275 P.3d at 100 n.11 (citing *Steese v. State*, 114 Nev. 479, 495,

960 P.2d 321, 331 (1998)). Green also failed to demonstrate actual prejudice, as there was substantial evidence presented at trial that he committed attempted murder with the use of a deadly weapon. See *Bennett*, 119 Nev. at 599-600, 81 P.3d at 8.

Second, Green claimed that the procedural bars did not apply because his federal court proceedings have been stayed to permit him to exhaust state remedies. Green failed to demonstrate that his pursuit of federal court relief provided an impediment external to the defense that should excuse the procedural bars. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), *abrogated by statute on other grounds as recognized by Huebler*, 128 Nev. at \_\_\_ n.2, 275 P.3d 91, 95 n.2 (2012). Therefore, the district court did not err in denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

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

---

<sup>3</sup>We also conclude that the district court did not err in denying Green's motion for the appointment of counsel and request for evidentiary hearing.

cc: Hon. Stefany Miley, District Judge  
James H. Green  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk