

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEREMY DALE MCCASKILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67224

FILED

MAY 20 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from orders of the district court denying a post-conviction petition for a writ of habeas corpus and a motion to modify or correct an illegal sentence.¹ Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Post-conviction petition for a writ of habeas corpus

Appellant Jeremy Dale McCaskill filed his petition on May 12, 2014, almost ten years after issuance of the remittitur on direct appeal on September 21, 2004. *McCaskill v. State*, Docket No. 41407 (Order Affirming and Remanding for Correction of Judgment of Conviction, August 25, 2004). Thus, McCaskill's petition was untimely filed. See NRS 34.726(1). Moreover, McCaskill's petition was successive because he had

¹This 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 *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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.² See NRS 34.810(1)(b)(2); NRS 34.810(2). McCaskill'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, McCaskill claimed the procedural bars did not apply because the district court did not have jurisdiction to convict him as all laws passed by the legislature since 1957 and codified in the Nevada Revised Statutes do not contain an enacting clause as required by the Nevada Constitution. See Nev. Const. art. 4, § 23. This claim did not demonstrate good cause to overcome the procedural bars. McCaskill's claim did not implicate the jurisdiction of the courts. See Nev. Const. art. 6, § 6; NRS 171.010. Moreover, the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes reproduce those laws as classified, codified, and annotated by the Legislative Counsel. See NRS 220.110; NRS 220.120.

Second, McCaskill claimed he had good cause to overcome the procedural bars because he had to use unorthodox research methods to discover his claims. McCaskill did not demonstrate there was an impediment external to the defense that prevented him from raising his claims in a timely manner as all of his claims were reasonably available to

²*McCaskill v. State*, Docket No. 49824 (Order of Affirmance, November 14, 2008).

be raised in his first petition. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).


Third, McCaskill claimed the procedural bars should not apply because he is actually innocent. In order to demonstrate a fundamental miscarriage of justice sufficient to overcome the procedural bars, a petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence. *Calderon v. Thompson*, 523 U.S. 538, 559 (1998); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). McCaskill did not attempt to demonstrate his factual innocence. Therefore, McCaskill failed to show that “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.” *Calderon*, 523 U.S. at 559 (quoting *Schlup v. Delo*, 513 U.S. 298, 327, (1995)); *see also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537; *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Therefore, the district court did not err in denying the petition.


Motion to modify or correct an illegal sentence

In his motion filed on May 28, 2013, McCaskill claimed his sentence was illegal because he was convicted of second-degree murder and he asserted the district court could not impose a fine for that conviction. Preliminarily, McCaskill’s claim fell outside the narrow scope of claims permissible in a motion to modify sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Next, McCaskill failed to demonstrate his sentence was facially illegal or the district court lacked jurisdiction. *See id.* The district court did not impose a fine as part of McCaskill’s sentence; rather the district court properly imposed restitution, an administrative assessment, payment of his public

defender's fees, and a DNA analysis fee. See NRS 176.033(1)(c); NRS 176.062; NRS 176.0915(1)(a); NRS 178.3975(1). Therefore, the district court did not err in denying the motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Connie J. Steinheimer, District Judge
Jeremy Dale McCaskill
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

³We also conclude the district court did not err by denying McCaskill's motion for the appointment of counsel, and in denying relief for McCaskill's motion to dismiss for lack of subject matter jurisdiction and accompanying documents.