

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEITH PIRL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68091

FILED

NOV 19 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 postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Appellant Keith Pirl argues the district court erred in denying his postconviction petition for a writ of habeas corpus without conducting an evidentiary hearing. Pirl filed his petition on May 7, 2014, more than two years after issuance of the remittitur on direct appeal on August 8, 2011. *Pirl v. State*, Docket No. 57833 (Order of Affirmance, July 14, 2011). Thus, Pirl's petition was untimely filed. *See* NRS 34.726(1). Moreover, Pirl's petition was successive because he had previously filed a postconviction 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.¹ See NRS 34.810(2). Pirl's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

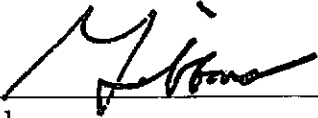
First, Pirl argues he has good cause due to ineffective assistance of his trial counsel. A procedurally barred claim of ineffective assistance of trial counsel cannot constitute good cause for additional claims of ineffective assistance of counsel. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Pirl's claims of ineffective assistance of trial counsel were reasonably available to be raised in his previous petition, and therefore, Pirl fails to demonstrate an impediment external to the defense prevented him from complying with the procedural bars. See *id.* at 252-53, 71 P.3d at 506. Therefore, the district court did not err in denying Pirl's petition without conducting an evidentiary hearing.


Second, Pirl argues he is actually innocent because he did not intentionally shoot the victim in this matter. Pirl's underlying claim was reasonably available to be raised in a timely petition. See *id.* To prove actual innocence as a gateway to reach procedurally-barred constitutional


¹*Pirl v. State*, Docket No. 63202 (Order of Affirmance, December 13, 2013).

claims of error, a petitioner must 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)). Pirl's claim failed to meet that narrow standard. Therefore, the district court did not err in denying Pirl's petition without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Lidia Stiglich, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk