

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

URIEL VELASCO,  
Appellant,  
vs.  
WARDEN, N.D.O.C.; AND THE STATE  
OF NEVADA,  
Respondents.

No. 68695

FILED

DEC 29 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order granting the State's motion to dismiss a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Appellant Uriel Velasco filed his petition on July 9, 2012, more than five years after entry of the judgment of conviction on July 20, 2006.<sup>1</sup> Therefore, Velasco's petition was untimely and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See NRS 34.726(1).

Velasco acknowledged his petition was untimely, and he attempted to overcome the procedural bar by arguing (1) he is actually innocent; (2) good cause exists because he does not speak English; and (3) the International Court of Justice's decision in *Case Concerning Avena*

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<sup>1</sup>Velasco did not pursue a direct appeal.

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*and Other Mexican Nationals (Mex. v. U.S.) (Avena)*, 2004 I.C.J. 12 (March 31), obligates the district court to review his claim that his notification rights under the Vienna Convention on Consular Relations were violated.

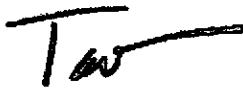
The district court found Velasco's claim of actual innocence did not excuse the procedural default because he failed to support his claim with new reliable evidence as is required by *Schlup v. Delo*, 513 U.S. 298, 324 (1995). Velasco's language-barrier claim did not establish good cause because he did in fact file a Spanish-language petition on July 9, 2012, and he has failed to explain why he could not have filed a Spanish-language petition within the statutory filing period. And, even assuming no one informed Velasco of his right to consular assistance, he has made no showing of actual prejudice and Vienna-Convention claims are subject to state procedural default rules.


Our review of the record reveals the district court's factual findings are supported by substantial evidence and are not clearly wrong. We conclude Velasco was not entitled to an evidentiary hearing and the district court did not err by denying his habeas petition. *See Medellin v. Texas*, 552 U.S. 491 (2008) (holding the International Court of Justice's decision in *Avena* is not a directly enforceable domestic federal law that preempts state procedural default rules for habeas petitions); *Nika v. State*, 124 Nev. 1272, 1301, 198 P.3d 839, 858 (2008) (observing a petitioner is entitled to an evidentiary hearing on his claims only if he "assert[ed] specific factual allegations that [were] not belied or repelled by the record and that, if true, would entitle him to relief"); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005)

("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Jerome M. Polaha, District Judge  
Mary Lou Wilson  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk