

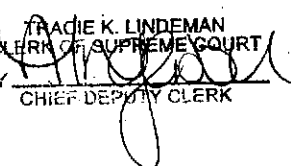
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JULIUS BRADFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67884

FILED

JUL 27 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF 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. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant Julius Bradford filed his petition on August 29, 2014, more than four years after issuance of the remittitur on direct appeal on December 15, 2009. *Bradford v. State*, Docket No. 50630 (Order of Affirmance, June 30, 2009). Thus, Bradford's petition was untimely filed. See NRS 34.726(1). Moreover, Bradford's petition was successive because he had previously filed two postconviction petitions 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 petitions.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Bradford'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).

¹*Bradford v. State*, Docket No. 61559 (Order of Affirmance, October 16, 2014); *Bradford v. State*, Docket No. 58529 (Order of Affirmance, July 23, 2013).

First, Bradford argues he has good cause to overcome the procedural bars because the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by withholding information regarding an agreement it made with a witness, Ashton Parker. Bradford asserts the State failed to disclose an agreement it made with Parker, in which it agreed to a lenient plea deal regarding Parker's battery constituting domestic violence charge in exchange for Parker's testimony in this matter. Bradford acknowledges the records related to this issue have been available to him since 2007, but he states he did not to review those records at an earlier time because the State had asserted it had not made such an agreement with Parker.

"To prove a Brady violation, the accused must make three showings: (1) the evidence is favorable to the accused, either because it is exculpatory or impeaching; (2) the State withheld the evidence, either intentionally or inadvertently; and (3) prejudice ensued, i.e., the evidence was material." *State v. Huebler*, 128 Nev. 192, 198, 275 P.3d 91, 95 (2012) (internal quotation marks omitted). When a claim alleging withheld exculpatory evidence is raised in an untimely postconviction 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." *Id.* (citing *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003)). A review of the record reveals the district court properly concluded Bradford did not overcome the procedural bars for this claim.

Bradford did not demonstrate the State withheld evidence of an agreement with Parker. During trial, Parker testified he had made an

agreement with the State regarding an unrelated grand larceny charge and had made no additional agreements with the State in exchange for testifying. Moreover, Parker's guilty plea agreement for the battery charge makes no reference to leniency in exchange his testimony in this matter. Further, as acknowledged by Bradford, he had access to Parker's records since 2007, and accordingly, he did not demonstrate an impediment external to the defense prevented him from raising this issue in a timely manner. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).

In addition, Bradford did not demonstrate this information was material to his defense.² There was strong evidence of Bradford's guilt presented at trial; an eyewitness testified regarding Bradford's involvement in the attack on the victim; a witness testified that Bradford was present while his codefendants discussed their involvement in the attempted robbery and murder of the victim and Bradford did not deny their statements; and Parker testified Bradford told him he and the other codefendants intended to rob the victim and Bradford directed a codefendant to kill the victim when the victim resisted. Given the strong evidence of Bradford's guilt presented at trial, he failed to demonstrate

²We note Bradford does not address whether he made a specific request to the State for information regarding any possible agreements made between it and Parker regarding leniency for his battery constituting domestic violence charge in exchange for his testimony. As Bradford did not demonstrate he made a specific request for this information, the proper materiality test for this claim is whether there was a reasonable probability of a different outcome at the trial had the allegedly withheld evidence been disclosed. *See Mazzan v. Warden*, 116 Nev. 48, 74, 993 P.2d 25, 41 (2000).

there was a reasonable probability of a different outcome at the trial had the State disclosed information related to the guilty plea agreement in Parker's battery charge. See *Mazzan v. Warden*, 116 Nev. at 74, 993 P.2d at 41. Therefore, we conclude the district court did not err in denying relief.

Second, Bradford argues the procedural bars do not apply because he filed this petition while the appeal from the denial of his second petition was pending before the Nevada Supreme Court. We conclude the district court properly concluded the procedural bars precluded consideration of the merits of Bradford's underlying claims.

NRS 34.726(1) provides that a postconviction petition for a writ of habeas corpus must be filed within one year after the entry of the judgment of conviction or the issuance of the remittitur from the denial of a direct appeal from the judgment of conviction. *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). The prior appeal noted by Bradford was not a direct appeal from the judgment of conviction. The timely filing date for a postconviction petition for a writ of habeas corpus was one year from the issuance of the remittitur on direct appeal on December 15, 2009, and Bradford did not file the instant petition prior to that date.

Moreover, as stated previously, Bradford's petition is successive and he must demonstrate good cause and actual prejudice before a court may reach the merits of his underlying claims. See NRS 34.810(1)(b); NRS 34.810(3). The existence of a pending appeal regarding a prior petition when Bradford filed this petition in the district court did not demonstrate an impediment external to the defense prevented him from raising his claims in compliance with the procedural bars and

Bradford's underlying claims were reasonably available to be raised in a timely manner. *See Hathaway*, 119 Nev. at 252-53, 71 P.3d at 506. Therefore, we conclude the district court did not err in denying relief.

Third, Bradford argues he should have been entitled to the mandatory appointment of postconviction counsel in this matter because this conviction was used as an aggravating factor for a separate conviction in which he received the death penalty. As he argues he was entitled to the appointment of postconviction counsel in this matter, he asserts the ineffective assistance of his prior postconviction counsel provided good cause to overcome the procedural bars. However, the Nevada Supreme Court has already concluded the appointment of postconviction counsel was not statutorily or constitutionally required in this case. *See Bradford v. State*, Docket No. 61559 (Order of Affirmance, October 16, 2014). Because the appointment of postconviction counsel was not required in this case, the ineffective assistance of prior postconviction counsel did not provide good cause for this late and successive petition. *See Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 870 (2014). Therefore, we conclude the district court did not err in denying relief for this claim.


Fourth, Bradford argues he is actually innocent and the failure to consider his claims on the merits would result in a fundamental miscarriage of justice. In support of this claim, Bradford submitted declarations from his codefendants, which both assert the three codefendants had not made an agreement to rob or murder the victim prior to the incident. In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Calderon v. Thompson*, 523 U.S.

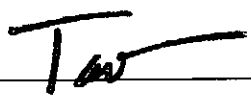
538, 559 (1998). To prove actual innocence as a gateway to reach procedurally-barred constitutional claims of error, a petitioner must show “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.” *Calderon*, 523 U.S. at 559 (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). When considering new evidence in support of a claim of actual innocence courts must “assess how reasonable jurors would react to the overall, newly supplemented record.” *Berry v. State*, 131 Nev. ___, ___, 363 P.3d 1148, 1156 (2015) (quotation marks omitted).

We conclude Bradford failed to demonstrate he was actually innocent. As discussed previously, there was strong evidence of Bradford’s guilt presented at trial. In addition, the declarations made by Bradford’s codefendants are self-serving because their statements would lessen the criminal liability of all of the defendants. *See id.* (explaining courts should consider the likely credibility of new evidence in an actual innocence claim and stating as an example “an affidavit from a death row inmate confessing to a defendant’s crime may have less probative force than an affidavit from a disinterested witness who claims to have seen the inmate commit the crime.”). When considered in light of all of the evidence produced at trial, the declarations from Bradford’s codefendants did not demonstrate that a reasonable juror would not have convicted Bradford had they heard this testimony from Bradford’s codefendants. Therefore, we conclude the district court did not err in denying this claim without considering it at an evidentiary hearing. *See id.* at ___, 363 P.3d at 1155 (stating a district court should hold an evidentiary hearing regarding a claim of actual innocence where credible new evidence “would show that it

is more likely than not that no reasonable jury would find the petitioner guilty beyond a reasonable doubt"). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk