

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAURY A. SINGER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69503

**FILED**

OCT 19 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying the postconviction petition for a writ of habeas corpus appellant Maury Singer filed on September 9, 2015.<sup>1</sup> Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

First, Singer claims the district court erred by failing to consider his response to the “State’s Response and Motion to Dismiss Defendant’s Petition for Writ of Habeas Corpus and Omnibus Opposition to Defendant’s Motions filed September 9, 2015 and September 23, 2015.” In support of this claim, Singer argues the district court’s “Findings of Fact, Conclusions of Law, and Order” failed to recognize that his grounds for relief were not based on a trial witness’s recantation but rather on newly discovered evidence in the form of newspaper articles regarding undisclosed payments the State made to its witnesses. However, nothing

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

in the record suggests the district court failed to consider Singer's reply brief before ruling on his petition. The district court had plenty of time to consider Singer's response brief; Singer filed his response to the State's motion to dismiss on October 26, 2015, and the district court did not make its ruling on Singer's petition until November 17, 2015. Moreover, the district court made specific findings regarding the newspaper articles, Singer's *Brady*<sup>2</sup> claim, and Singer's actual innocence claim. Accordingly, we conclude Singer has not demonstrated the district court erred in this regard.

Second, Singer appears to ask this court to resolve his habeas claims so he can exhaust his state remedies for federal review. However, the district court found Singer's petition was procedurally barred and Singer had failed to overcome the procedural bars with a showing of good cause or actual innocence. The record on appeal supports the district court's factual findings and we conclude the district court did not err in this regard. Accordingly, Singer's claims have defaulted and may not be considered on appeal. See NRS 34.726(1); NRS 34.800(1); NRS 34.810(2); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005) (application of procedural default rules is mandatory).

Third, Singer claims the district court erred in finding his petition was procedurally barred because he is actually innocent and failure to consider his claims would constitute a fundamental miscarriage of justice. However, the district court found Singer's bare claim of actual

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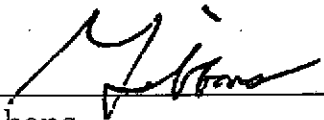
<sup>2</sup>*Brady v. Maryland*, 373 U.S. 83 (1963).

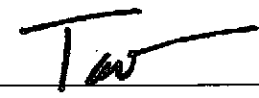
innocence was insufficient to meet the *Calderon* test, which requires a petitioner to demonstrate “it is more likely than not that no reasonable juror would have convicted him in light of new evidence presented in his habeas proceedings.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (internal quotation marks omitted). The district court further found Singer had previously raised this claim and it had been rejected. The record on appeal supports the district court’s factual findings and we conclude the district court did not err in this regard. *See Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975); *Singer v. State*, Docket No. 61994 (Order of Affirmance, June 13, 2013); *Singer v. State*, Docket No. 38561 (Order of Affirmance, June 27, 2002).

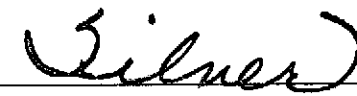
Fourth, Singer claims the district court erred by denying his petition without conducting an evidentiary hearing on his claims that the State violated *Brady*, defense counsel provided ineffective assistance, and he had good cause to excuse the procedural bars to his petition. However, the district court found Singer was not entitled to an evidentiary hearing because he failed to support his motion with facts that would entitle him to relief. The record on appeal supports the district court’s factual finding and we conclude the district court did not err in this regard. *See Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008) (explaining a petitioner’s habeas claims must consist of more than bare allegations, and he is only entitled to an evidentiary hearing if he has asserted specific factual allegations that are not belied or repelled by the record and, if true, would entitle him to relief).

Having considered Singer's appeal and concluded the district court did not err by denying his habeas petition, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Jennifer P. Togliatti, District Judge  
Maury A. Singer  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk