

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHAWN LEWIS WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71593

FILED

AUG 16 2017

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

ORDER OF AFFIRMANCE

Shawn Lewis White appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on May 4, 2016.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

White's petition was untimely because it was filed more than nine years after the remittitur on direct appeal was issued on June 21, 2006,² and it was successive because he had previously filed two postconviction petitions for writs of habeas corpus.³ See NRS 34.726(1); NRS 34.810(2). Therefore, White's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically

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

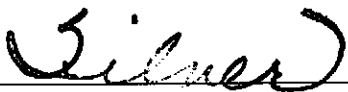
²See *White v. State*, Docket Nos. 46518 & 46521 (Order of Affirmance, May 26, 2006).

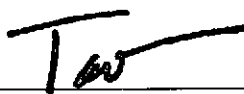
³See *White v. State*, Docket No 57179 (Order of Affirmance, May 9, 2011). White did not appeal from the district court order denying his first habeas petition.

pleaded laches, White was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

White 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. The district court found White's actual innocence claim was barred by the doctrine of the law of the case because he had previously raised this claim in his second habeas petition, the district court rejected the claim, and the Nevada Supreme Court affirmed the district court's judgment. The record on appeal supports the district court's factual findings, and we conclude the district court did not err in finding White's third habeas petition was procedurally barred. See *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005) (application of procedural default rules is mandatory); *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975) ("The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."); *White v. State*, Docket No. 57179 (Order of Affirmance, May 9, 2011) (concluding White failed to demonstrate actual innocence). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Shawn Lewis White
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk