

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW SCOTT WHITE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71345

**FILED**

AUG 16 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Matthew Scott White appeals from a district court order dismissing the postconviction petition for a writ of habeas corpus he filed on March 24, 2014.<sup>1</sup> First Judicial District Court, Carson City; James E. Wilson, Judge.

White's petition was untimely because it was filed more than eleven years after the remittitur on direct appeal was issued on August 16, 2002,<sup>2</sup> and it was successive because he had previously filed a postconviction petition for a writ of habeas corpus.<sup>3</sup> 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

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

<sup>2</sup>See *White v. State*, Docket No. 39435 (Order of Affirmance, July 22, 2002).

<sup>3</sup>See *White v. State*, Docket No. 54991 (Order of Affirmance, September 29, 2010).

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.<sup>4</sup> A colorable showing of actual innocence may overcome procedural bars under the fundamental miscarriage of justice standard. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). “Actual innocence’ means factual innocence, not mere legal insufficiency.” *Mitchell v. State*, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006) (internal quotation marks and brackets omitted). “To be credible,’ a claim of actual innocence must be based on reliable evidence not presented at trial.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schulp v. Delo*, 513 U.S. 298, 324 (1995)). And, to demonstrate actual innocence of the underlying crime, the petitioner must show “it is more likely than not that no reasonable juror would have convicted him in light of the new evidence’ presented in his habeas petition.” *Id.* (quoting *Schulp*, 513 U.S. at 327).


The district court found White failed to establish the failure to consider his petition would result in a fundamental miscarriage of justice. The record supports this finding and demonstrates White failed to make a colorable showing of actual innocence. Accordingly, we conclude the district court did not err by denying White’s petition as procedurally

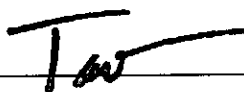
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<sup>4</sup>White’s claim that the district court erred in failing to consider his motion in support of actual innocence is without merit. See NRS 34.750(5); *State v. Powell*, 122 Nev.751, 758, 138 P.3d 453, 458 (2006) (recognizing that district courts are vested with broad discretion regarding supplemental pleadings in postconviction cases).

barred, *see State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. James E. Wilson, District Judge  
Matthew Scott White  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk