

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARKUS WEATHERSPOON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72846

FILED

FEB 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Markus Weatherspoon appeals from an order of the district court denying his November 21, 2016, postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Weatherspoon filed his petition 14 years after issuance of the remittitur on direct appeal on November 5, 2002. *See Weatherspoon v. State*, Docket No. 38505 (Order Affirming in Part, Reversing in Part and Remanding, October 8, 2002). Weatherspoon's petition was therefore untimely filed. *See NRS 34.726(1); Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004). Weatherspoon's petition was also successive because he had previously filed a postconviction petition for a writ of habeas corpus.² NRS 34.810(2). Weatherspoon's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. *See NRS 34.726(1); NRS 34.810(3)*.


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


²*Weatherspoon v. State*, Docket No. 42761 (Order of Affirmance and Limited Remand to Correct the Judgment of Conviction, October 6, 2004).


Weatherspoon did not allege he had good cause to overcome the procedural bars. He stated the test for actual innocence, but he did not allege he was actually innocent such that denying consideration of his substantive claims would result in a fundamental miscarriage of justice. See *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Further, Weatherspoon failed to show “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). We therefore conclude the district court did not err in denying Weatherspoon’s petition as procedurally barred.

We further conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge
Markus Weatherspoon
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk