

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM LYONS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72743

FILED

MAY 15 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY \_\_\_\_\_  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

William Lyons appeals from a district court order denying the postconviction petition for a writ of habeas corpus filed on November 13, 2015, and the supplemental brief filed on September 26, 2016. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Lyons' petition was untimely because it was filed more than nine years after the remittitur on direct appeal was issued on April 18, 2006,<sup>1</sup> and it was successive because his previous postconviction habeas petition was denied on the merits.<sup>2</sup> See NRS 34.726(1); NRS 34.810(2). Consequently, Lyons' petition was procedurally barred absent a demonstration of good cause and actual prejudice or that failure to consider

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<sup>1</sup>See *Lyons v. State*, Docket No. 42423 (Order Affirming in Part, Reversing in Part, and Remanding, March 23, 2006). Lyons did not pursue an appeal from the amended judgment of conviction the district court entered on May 5, 2006. See *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2009) (concluding the statutory time limit for filing a postconviction petition for a writ of habeas corpus does not automatically restart simply because the district court entered an amended judgment of conviction).

<sup>2</sup>See *Lyons v. State*, Docket No. 59108 (Order of Affirmance, March 14, 2013).

his claims would result in a fundamental miscarriage of justice. See NRS 34.726(1); NRS 34.810(3); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Moreover, because the State specifically plead laches, Lyons was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

Lyons claimed ineffective assistance of postconviction counsel during the pendency of his first habeas petition provided good cause to overcome the procedural bars to this habeas petition. However, because Lyons did not have a constitutional or statutory right to postconviction counsel, ineffective assistance of postconviction counsel did not provide good cause to excuse the procedural bars to his petition. See *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014).

Lyons claimed Nevada should adopt the equitable tolling standards used in the federal courts and argued the facts in his case would qualify for equitable tolling. However, the Nevada Supreme Court has expressly “rejected equitable tolling of the one-year filing period set forth in NRS 34.726 because the statute’s plain language requires a petitioner to demonstrate a legal excuse for any delay in filing a petition.” *Id.* at 576, 331 P.3d at 874.


Lyons also claimed the procedural bars should not apply because he is actually innocent. A colorable showing of actual innocence may overcome procedural bars under the fundamental miscarriage of justice standard. *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. However, “actual innocence means factual innocence, not mere legal insufficiency,” *Bousley v. United States*, 523 U.S. 614, 623 (1998), and 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.”


*Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schulp v. Delo*, 513 U.S. 298, 327 (1995)). Lyons did not make a colorable showing of actual innocence.

We conclude Lyons failed to demonstrate good cause or a fundamental miscarriage of justice sufficient to excuse the procedural bars to his petition and the State's specific plea of laches. Because Lyons' claims were procedurally barred and could not be considered on their merits, he was not entitled to an evidentiary hearing on the defaulted claims and the district court did not err in denying his petition. See *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1974 (2005) (explaining the application of procedural bars is mandatory). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Kenneth C. Cory, District Judge  
Christopher R. Oram  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk