

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT CHARLES BARROWS, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73709

FILED

JUN 29 2018

ELIZABETH A. DROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Robert Charles Barrows, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Barrows filed his petition on April 4, 2017, more than two years after entry of the judgment of conviction on October 8, 2014.<sup>2</sup> Thus, Barrows' petition was untimely filed. *See* NRS 34.726(1). Barrows' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

First, Barrows claimed he had good cause because his counsel failed to file a notice of appeal. Barrows did not demonstrate good cause. Barrows failed to demonstrate that he reasonably believed an appeal was pending during the timely-filing period, particularly in light of Barrows' specific waiver of his right to appeal the judgment of conviction in his written plea agreement. In addition, Barrows did not demonstrate that he filed his petition within a reasonable time of learning no appeal had been

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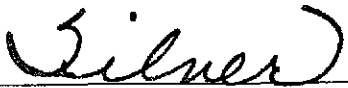
<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

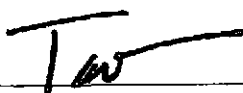
<sup>2</sup>Barrows did not pursue a direct appeal.

taken. Therefore, we conclude the district court did not err by denying the petition as procedurally barred. See *Hathaway v. State*, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003).

Second, Barrows appeared to claim the procedural bar did not apply because he was actually innocent. Barrows asserted he did not realize his codefendant had taken items from the store and he only threatened the store employee with a screwdriver because he believed his codefendant was being attacked by the store employee. A petitioner may overcome the procedural bars and “secure review of the merits of defaulted claims by showing that the failure to consider the petition on its merits would amount to a fundamental miscarriage of justice.” *Berry v. State*, 131 Nev. \_\_\_, \_\_\_, 363 P.3d 1148, 1154 (2015). A petitioner can demonstrate a fundamental miscarriage of justice occurred because he is actually innocent by demonstrating “it is more likely than not that no reasonable juror would have convicted him in the light of . . . new evidence.” *Id.* Our review of the record reveals Barrows was not entitled to relief because his actual-innocence claim was not based upon new evidence. See *Schlup v. Delo*, 513 U.S. 298, 324 (1995) (“To be credible, [an actual-innocence claim] requires petitioner to support his allegations of constitutional error with new reliable evidence.”). Therefore, we conclude the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. William D. Kephart, District Judge  
Robert Charles Barrows, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk