

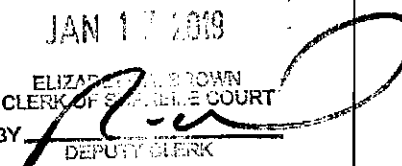
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAIMON MONROE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74943-COA

FILED

JAN 17 2019

ELIZABETH BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Daimon Monroe 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; Douglas Smith, Judge.

Monroe filed his petition on September 19, 2017, more than three years after issuance of the remittitur on direct appeal on October 23, 2013. *Monroe v. State*, Docket No. 58171 (Order of Affirmance, September 26, 2013). Thus, Monroe's petition was untimely filed. *See* NRS 34.726(1). Moreover, Monroe's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.<sup>2</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Monroe's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

First, Monroe argued he had good cause because he recently discovered the State withheld information related to search warrants the

---

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

<sup>2</sup>*Monroe v. State*, Docket No. 66661 (Order of Affirmance, April 14, 2015).


authorities used to obtain evidence against him in a separate criminal matter. Monroe did not explain how the warrants for his separate criminal matter had any bearing upon this case or how evidence related to that matter could have helped him with this case. Accordingly, Monroe did not establish any information regarding search warrants for a separate criminal matter were material to this case. *See State v. Huebler*, 128 Nev. 192, 198, 275 P.3d 91, 95 (2012) (recognizing that, when good cause and prejudice is based upon a claim that evidence was withheld, a petitioner must demonstrate that the evidence was withheld and that the evidence was material). Therefore, the district court did not err by finding Monroe failed to demonstrate good cause.

Second, Monroe appeared to claim that the information concerning the search warrants at issue in the separate criminal matter demonstrated that he is actually innocent of the offenses at issue in this case. 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. 957, 966, 363 P.3d 1148, 1154 (2015). A petitioner can demonstrate a fundamental miscarriage of justice occurred because he is actually innocent by showing “it is more likely than not that no reasonable juror would have convicted him in the light of . . . new evidence.” *Id.* Monroe based his actual-innocence claim upon evidence concerning search warrants that were not a part of this case, he did not explain how information concerning a separate criminal matter had any bearing upon his guilt or innocence in this case, and his assertion did not demonstrate he was factually innocent of the allegations involved in this matter. *See Calderon v. Thompson*, 523 U.S. 538, 559 (1998); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Therefore, Monroe did

not demonstrate he was actually innocent and the district court did not err by denying the petition as procedurally barred.

Next, Monroe argues the district court erred by declining to conduct an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations not belied by the record and, if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). The district court concluded Monroe's claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

cc: Hon. Douglas Smith, District Judge  
Daimon Monroe  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>3</sup>The Honorable Michael L. Douglas did not participate in the decision in this matter.

Because Judge Silver is no longer a judge with this court and has not participated in this decision, we deny Monroe's motion to disqualify Judge Silver as moot.