

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSCAR WILLIAMS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73849-COA

FILED

MAR 29 2019

ELIZABETH BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Oscar Williams, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 4, 2017.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Williams filed his petition 30 years after issuance of the remittitur on direct appeal on April 21, 1987, *see Williams v. State*, 103 Nev. 106, 734 P.2d 700 (1987), and 24 years after the effective date of NRS 34.726, *see* 1991 Nev. Stat., ch. 44, § 5, at 75-76, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. ___, ___ n.12, 423 P.3d 1084, 1097 n.12 (2018). Williams' petition was therefore untimely filed. *See* NRS 34.726(1). Williams' petition was also successive.² *See* NRS 34.810(1)(b)(2); NRS

¹This 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).

²*See Williams v. State*, Docket No. 67627 (Order of Affirmance, July 14, 2015); *Williams v. State*, Docket No. 55320 (Order of Affirmance, June 10, 2010); *Williams v. State*, Docket No. 53771 (Order of Affirmance,

34.810(2). Williams' petition was therefore 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). Further, because the State specifically pleaded laches, Williams was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).


Williams claimed the decisions in *Welch v. United States*, 578 U.S. ___, 136 S. Ct. 1257 (2016), and *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718 (2016), provided good cause to excuse the procedural bars to his claim that he is entitled to the retroactive application of *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000). We conclude the district court did not err by concluding the cases did not provide good cause to overcome the procedural bars. See *Branham v. Warden*, 134 Nev. ___, ___, 434 P.3d 313, 316 (Ct. App. 2018).

Williams also claimed he could demonstrate a fundamental miscarriage of justice to overcome the procedural bars. A petitioner may overcome procedural bars by demonstrating he is actually innocent such that the failure to consider his petition would result in a fundamental miscarriage of justice. *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. Williams claimed that "[t]he facts in this case established that [he] only committed a second-degree murder." This is not actual innocence, and Williams thus failed to overcome the procedural bars. See *Bousley v. United States*, 523 U.S. 614, 623 (1998) ("[A]ctual innocence' means factual innocence, not


October 27, 2009); *Williams v. State*, Docket No. 51721 (Order of Affirmance, January 8, 2009); *Williams v. State*, Docket No. 40403 (Order of Affirmance, August 20, 2003); *Williams v. State*, Docket No. 39244 (Order of Affirmance, December 4, 2002); *Williams v. State*, Docket No. 34857 (Order of Affirmance, December 11, 2000); *Williams v. State*, Docket No. 19470 (Order Dismissing Appeal, June 29, 1989).

mere legal insufficiency.”). And because he failed to demonstrate a fundamental miscarriage of justice, Williams failed to overcome the presumption of prejudice to the State. See NRS 34.800. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District
Oscar Williams, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk