

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARREN ROY MACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77479-COA

FILED

MAY 21 2019

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

ORDER OF AFFIRMANCE

Darren Roy Mack appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on August 8, 2018.¹ Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Mack's petition was untimely because it was filed more than seven years after the remittitur on direct appeal was issued on March 8, 2011,² and it was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits.³ See NRS 34.726(1); NRS 34.810(2). Consequently, Mack's petition was procedurally barred absent a demonstration of good cause and actual prejudice or that failure to consider 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), *abrogated on*

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

²See *Mack v. State*, Docket No. 51143 (Order of Affirmance, June 22, 2010).

³See *Mack v. State*, Docket No. 69225 (Order of Affirmance, January 10, 2018).

other grounds by Rippo v. State, 134 Nev. Adv. Op. 53, at *22 n.12, 423 P.3d 1084, 1097 n.12 (2018). Moreover, because the State specifically pleaded laches, Mack was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

In an attempt to excuse his procedural defects, Mack claimed he was actually innocent of the crime of first-degree murder because the killing was committed in self-defense. 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. “To establish actual innocence, petitioner must demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him.” *Bousley v. United States*, 523 U.S. 614, 623 (1998) (internal quotation marks omitted) (addressing actual innocence in guilty-plea cases).


The district court found the exhibits Mack offered in support of his actual-innocence claim consisted of “police reports from 2006, documents from the 2005-06 divorce proceedings, and interviews from his ‘friends’ who believe he did not commit murder—all of which are over a decade old and generated at the behest of [Mack], himself.” The record supports the district court’s finding for the most part—Mack’s exhibits also included a transcript of a “Courtroom Jury Interview with Matt Beals from Dateline N.B.C.,” an affidavit dated July 30, 2018, and an affidavit dated August 1, 2018.

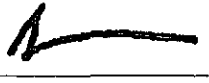
We conclude from our review of the record that Mack failed to present a colorable showing of actual innocence, the district court did not abuse its discretion by rejecting Mack’s actual-innocence claim without conducting an evidentiary hearing, and Mack did not overcome the rebuttable presumption of prejudice. Therefore, the district court did not

err by denying Mack's procedurally barred postconviction habeas petition.
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
Darren Roy Mack
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk