

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE OSCAR ROBLEDO-NORIEGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76661-COA

FILED

MAY 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jose Oscar Robledo-Noriega appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Robledo-Noriega filed his petition on March 9, 2018, more than eight years after entry of the judgment of conviction on September 22, 2009.² Thus, Robledo-Noriega's petition was untimely filed. See NRS 34.726(1). Noriega's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See *id.* Moreover, because the State specifically pleaded laches, Robledo-Noriega was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

Robledo-Noriega claimed he would suffer a fundamental miscarriage of justice if his claims were not reviewed on their merits because he is actually innocent. In support of this claim, Robledo-Noriega

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).

²Robledo-Noriega did not pursue a direct appeal.

asserted he was incarcerated for an unrelated offense when the he was alleged to have sexually abused the victim and contended the victim stated that he did not abuse her during her preliminary hearing testimony.

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). In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence. *Calderon v. Thompson*, 523 U.S. 538, 559 (1998); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). A petitioner can demonstrate actual innocence by demonstrating “it is more likely than not that no reasonable juror would have convicted him in the light of . . . new evidence.” *Berry*, 131 Nev. at 966, 363 P.3d at 1154 (quotation marks omitted).

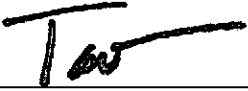
The district court found Robledo-Noriega’s actual-innocence claim was not supported with specific, factual assertions and the record belied Robledo-Noriega’s contention concerning the victim’s testimony. For those reasons, the district court found Robledo-Noriega failed to demonstrate no reasonable juror would have convicted him in light of the issues he raised in his petition. *See id.* The record supports the district court’s finding. Based on the record before this court, we conclude the district court did not err by denying this claim.


Robledo-Noriega also failed to overcome the presumption of prejudice to the State. *See* NRS 34.800(2). Therefore, we conclude the

district court did not err by denying the petition as procedurally barred.³
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
Jose Oscar Robledo-Noriega
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

³To the extent Robledo-Noriega contended he had good cause because he was uneducated in the law and was unsure how to challenge his judgment of conviction, such issues did not demonstrate an impediment external to the defense prevented him from raising his claims in a timely manner. *See Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988).