

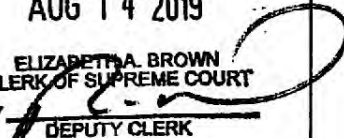
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACOB RAMIE PRATT,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 77559-COA

FILED

AUG 14 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jacob Ramie Pratt appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on September 10, 2018.¹ Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Pratt's petition was untimely because it was filed more than eleven years after the remittitur on direct appeal was issued on July 5, 2007.² See NRS 34.726(1). Consequently, the petition was procedurally barred absent a demonstration of good cause and actual prejudice or that the failure to consider his claim would result in a fundamental miscarriage of justice. See NRS 34.726(1); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev., 411, 428 n.12, 423 P.3d 1084, 1097 n.12 (2018).

Pratt appears to claim the procedural bar should not apply to his petition because he is actually innocent. A colorable showing of actual innocence may overcome a procedural bar under the fundamental


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


²See *Pratt v. State*, Docket No. 46472 (Order of Affirmance, June 8, 2007).

miscarriage of justice standard. *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. However, “actual innocence means factual innocence, not mere legal insufficiency,” and the “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) (quotation marks omitted) (addressing actual innocence in guilty plea cases).

Pratt has not made a colorable showing of actual innocence, and therefore, he has not demonstrated a fundamental miscarriage of justice sufficient to excuse the procedural bar to his petition. Accordingly, we conclude the district court did not err by denying his procedurally barred postconviction habeas petition,³ and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³Although the district court reached the correct result, it erred by finding this petition was successive because Pratt’s prior petitions were not decided on the merits. See NRS 34.810(2); *Pratt v. Warden*, Docket No. 71692-COA (Order of Affirmance, November 14, 2017); *Pratt v. Warden*, Docket No. 66488-COA (Order of Affirmance, February 4, 2015); *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

cc: Hon. Barry L. Breslow, District Judge
Jacob Ramie Pratt
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk