

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD ANTONIO WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71280

FILED

JUN 14 2017

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

ORDER OF AFFIRMANCE

Richard Williams appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Williams filed his petition on May 18, 2016, nearly 5 years after entry of the judgment of conviction on September 14, 2011. Thus, Williams' petition was untimely filed. *See* NRS 34.726(1). Williams' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

First, Williams claimed he had good cause to overcome the procedural bar because counsel failed to inform him of his right to a direct appeal and counsel failed to file a direct appeal on his behalf. We conclude the district court did not err by denying this claim because counsel did not have a duty to inform Williams about the right to appeal, Williams did not

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

request an appeal be filed, and Williams did not allege he expressed dissatisfaction regarding his sentence. *See Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011); *see also Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).


Second, Williams also appeared to argue he had good cause because he had new evidence the State paid witnesses to testify. Williams failed to support this claim with specific facts that, if true, would entitle him to relief. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

Finally, Williams claimed he would suffer a fundamental miscarriage of justice if his petition was not heard on the merits because he was incompetent at the time of his guilty plea. A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice. *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence of the crime—factual innocence, not legal innocence. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

Williams failed to demonstrate actual innocence because he failed to show that “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); *see also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537, *Mazzan*, 112 Nev. at 842, 921 P.2d at 922. Further, Williams’ claim involved legal innocence rather than factual innocence. Therefore, Williams failed to demonstrate a fundamental miscarriage of justice to overcome the procedural bar.

Having reviewed Williams' claims and determined the district court did not err by denying the petition as procedurally barred, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas Smith, District Judge
Richard Antonio Williams
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk