

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICARDO ANDERSON, JR.,
Appellant,
vs.
WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER,
Respondent.

No. 71155

FILED

OCT 12 2017

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

ORDER OF AFFIRMANCE

Ricardo Anderson, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 4, 2015, and supplemental petitions filed on March 7, 2016, and March 8, 2016.¹ First Judicial District Court; Storey County; James E. Wilson, Judge.

Anderson filed his petition more than five years after entry of the judgment of conviction on November 19, 2010. No direct appeal was taken. Anderson's petition was therefore untimely filed. See NRS 34.726(1); *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004). Anderson's petition was also successive insofar as it raised claims already raised in previous petitions and an abuse of the writ insofar as it raised new claims.² See NRS 34.810(2). Anderson's petition was therefore procedurally

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

²See *Anderson v. State*, Docket No. 66338 (Order of Affirmance, May 20, 2015). It appears no appeal was taken from the denial of a postconviction petition for a writ of habeas corpus Anderson filed on August 4, 2015.

barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

In his pleadings before the district court, Anderson failed to allege specific facts that would demonstrate good cause. The ineffective assistance of trial counsel cannot itself be good cause where, as here, it is procedurally barred. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (“[I]n order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted.”). Neither can the ineffective assistance of postconviction counsel be good cause where, as here, the appointment of counsel was not statutorily or constitutionally required. See *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871-72 (2014).

Anderson also claims he is actually innocent of two of the charges to which he pleaded guilty, such that it would result in a fundamental miscarriage of justice were his claims not considered on the merits. See *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). To demonstrate a fundamental miscarriage of justice, a petitioner must demonstrate he is actually innocent such 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)). And he must demonstrate he is factually, not merely legally, innocent of all charges brought, including those the State has foregone in exchange for a guilty plea. See *Bousley v. United States*, 523 U.S. 614, 624 (1998). Anderson has not alleged he is actually innocent of the 37 counts of forgery the State dismissed in exchange for his guilty plea. He has thus failed to demonstrate the failure to consider his claims on the merits resulted in a fundamental miscarriage of justice, and we conclude

the district court did not err in denying his petition as procedurally barred.
Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Silver, C.J.
Silver

Tao, J.
Tao

Gibbons, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
Ricardo Anderson, Jr.
Attorney General/Carson City
Storey County District Attorney
Storey County Clerk