

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BILL EMERY FODOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70385

FILED

DEC 28 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Bill Emery Fodor appeals from the district court order denying the postconviction petition for a writ of habeas corpus he filed on October 20, 2015.¹ Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Fodor's habeas petition was untimely because it was filed more than five years after the remittitur on direct appeal was issued on April 7, 2010,² and his petition was successive because he had previously filed two postconviction petitions for writs of habeas corpus.³ See NRS

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

²See *Fodor v. State*, Docket No. 52869 (Order of Affirmance, March 11, 2010).

³See *Fodor v. State*, Docket No. 58274 (Order of Affirmance, March 30, 2012). Foder did not appeal from the district court order denying his second habeas petition.

34.726(1); NRS 34.810(2). Therefore, Fodor'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).

Fodor claims the district court erred by denying his untimely and successive habeas petition because he made a colorable showing of actual innocence that was sufficient to overcome the procedural bars to his petition under the fundamental miscarriage of justice standard. In particular, he asserts a police property report that was not presented during his preliminary hearing and trial demonstrates the wire removed from his van was not the type of wire used in street light standards.

"In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence. Actual innocence means that it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 875 (2014) (internal citations and quotation marks omitted).

The district court found that Fodor failed to identify any new evidence of his innocence, the document forming the basis of his actual innocence claim had been in his possession since pretrial discovery, and the witnesses giving testimony about the type of wire found in Fodor's van were thoroughly cross-examined during the preliminary hearing and at trial. The record supports the district court's factual findings.

We conclude Fodor failed to make a colorable showing of actual innocence and the district court did not err by denying his procedurally-barred petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Silver

cc: Hon. Eric Johnson, District Judge
Bill Emery Fodor
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴The Honorable Jerome T. Tao, Judge, did not participate in the decision in this matter.