

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GUSTAVO CONTRERAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70202

FILED

FEB 23 2017

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

ORDER OF AFFIRMANCE

Appellant Gustavo Contreras appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on November 20, 2015.¹ Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Contreras' petition was untimely because it was filed more than three years after the remittitur on direct appeal was issued on October 8, 2012,² and it was successive because he had previously filed a postconviction petition for a writ of habeas corpus.³ See NRS 34.726(1);

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

²*Contreras v. State*, Docket No. 58644 (Order of Affirmance, September 12, 2012).

³*Contreras v. State*, Docket No. 63623 (Order of Affirmance, February 12, 2014).

NRS 34.810(2). Therefore, Contreras' 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).

Contreras claims the district court erred in denying his petition because the Jason Scott Spenser affidavit is newly discovered evidence which demonstrates he is actually innocent, he has good cause because the affidavit was not discovered until after the statutory period had run, and the failure to consider his claims would be unduly prejudicial.

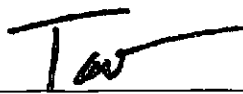
The district court found Contreras' petition was untimely, successive, and did not contain any justification for the procedural defects. To the extent Contreras claimed newly discovered evidence provided good cause to overcome the petition's procedural defects, the district court found this claim was without merit because the affidavit had been available for more than two years and Contreras had not alleged an impediment external to the defense prevented him from filing the petition sooner.

We defer to the district court's factual findings, see *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012), and we conclude the district court did not err by denying Contreras' petition as procedurally barred, see *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005); *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d

503, 506 (2003); *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. Accordingly,
we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
Gustavo Contreras
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk