


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN MAURICIO CASTILLO,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 75706-COA

FILED

SEP 20 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Juan Mauricio Castillo appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on December 6, 2013, and supplemental petition filed on April 19, 2017. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Castillo filed his petition more than 15 years after issuance of the remittitur on direct appeal on August 18, 1998. *See Castillo v. State*, Docket No. 29169 (Order Dismissing Appeal, July 28, 1998). Castillo's petition was therefore untimely filed. *See* NRS 34.726(1). His petition was also successive.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Castillo's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3), or that he was actually innocent such that it would result in a fundamental miscarriage of justice were his claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).

¹*See Castillo v. Warden*, Docket No. 62188 (Order of Affirmance, February 12, 2015); *Castillo v. State*, Docket No. 44555 (Order of Affirmance, April 5, 2005); *Castillo v. State*, Docket No. 37084 (Order of Affirmance, July 10, 2002).

Castillo contends the district court erred by dismissing his petition as procedurally barred. Castillo claimed the decisions in *Welch v. United States*, 578 U.S. ___, 136 S. Ct. 1257 (2016), and *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718 (2016), provided good cause to excuse the procedural bars to his claim that he is entitled to the retroactive application of *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000). A claim of good cause must be raised within one year of the claim becoming available. *See Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018). Castillo first raised this good-cause argument in a pleading filed more than one year after the decisions *Montgomery* (decided January 25, 2016) and *Welch* (decided April 18, 2016), and he did not attempt to explain the delay.² Accordingly, these cases do not provide good cause to overcome Castillo's procedural bars. Moreover, as a separate and independent ground to deny relief, this court has previously rejected a good-cause argument similar to Castillo's. *See Branham v. Warden*, 134 Nev., Adv. Op. 99, *6-7, 434 P.3d 313, 316 (Ct. App. 2018).


Castillo also claimed he could demonstrate a fundamental miscarriage of justice to overcome the procedural bars because he is actually innocent. A petitioner must allege specific facts that, if true and not belied by the record, would entitle him to relief. *Berry*, 131 Nev. at 967, 363 P.3d at 1154-55. “[A]ctual innocence’ means factual innocence, not mere legal insufficiency.” *Bousley v. United States*, 523 U.S. 614, 623 (1998)). Castillo argued that “the facts in this case established that [he] only committed a second-degree murder.” This is not factual innocence. Further, although Castillo pointed to evidence admitted at trial calling into question his

²The pleading was electronically filed on April 19, 2017.

identity as the shooter and raising the possibility that he shot in self-defense, Castillo failed to identify any facts that would have reduced the murder from first to second degree. Castillo thus failed to demonstrate he was actually innocent. We therefore conclude the district court did not err by dismissing Castillo's petition as procedurally barred,³ and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³The district court indicated it would address Castillo's claims on the merits notwithstanding the procedural bars. This is error, because application of the procedural bars is mandatory. *See State v. Eighth Judicial Dist. Court*, 121 Nev. 231, 112 P.3d 1070, 1074 (2005). We nevertheless affirm because the district court ultimately denied the petition as procedurally barred.

⁴Castillo has attempted to incorporate by reference arguments made below. "Parties shall not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal." NRAP 28(e)(2). We therefore decline to address those arguments.

cc: Hon. Scott N. Freeman, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk