

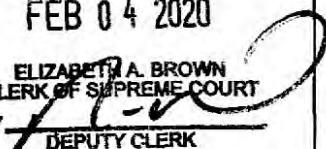
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDDIE RENCHER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78199-COA

FILED

FEB 04 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Eddie Rencher, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Rencher filed his petition on August 31, 2018, more than eight years after issuance of the remittitur on direct appeal on December 1, 2009. *Rencher, Jr. v. State*, Docket No. 52355 (Order of Affirmance, November 5, 2009). Thus, Rencher's petition was untimely filed. See NRS 34.726(1). Moreover, Rencher's petition was successive because he had previously filed two postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Rencher's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS

¹*Rencher, Jr. v. State*, Docket No. 67459-COA (Order of Affirmance, June 16, 2015); *Rencher, Jr. v. State*, Docket No. 59289 (Order of Affirmance, June 13, 2012).

34.810(3). Moreover, because the State specifically pleaded laches, Rencher was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

First, Rencher claimed the procedural bars did not apply to his petition because he challenged the jurisdiction of the district court. Rencher based his jurisdictional challenge upon an assertion that the Nevada Revised Statutes are void because the justices of the Nevada Supreme Court unconstitutionally participated in their creation in violation of separation of powers principles. However, these claims did not implicate the jurisdiction of the courts, and therefore, the procedural bars apply to Rencher's petition. See Nev. Const. art. 6, § 6; NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the court’s statutory or constitutional power to adjudicate the case.” (internal quotation marks omitted)). Moreover, Rencher was not entitled to relief because he did not demonstrate that the statute revision commission improperly encroached upon the powers of another branch of government. See *Comm’n on Ethics v. Hardy*, 125 Nev. 285, 291-92, 212 P.3d 1098, 1103 (2009) (“The purpose of the separation of powers doctrine is to prevent one branch of government from encroaching on the powers of another branch.”). Further, these claims were reasonably available to be raised in a timely petition and Rencher did not demonstrate an impediment external to the defense prevented him from doing so. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, the district court did not err by denying this good-cause claim without conducting an evidentiary hearing. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Second, Rencher contended he would suffer from a fundamental miscarriage of justice if his claims were not considered on their merits because he is actually innocent. Rencher contended he is actually innocent because the statute revision commission was unconstitutional and the Nevada Revised Statutes are unlawful. Rencher asserted that, therefore, the district court lacked jurisdiction to convict him. A petitioner may overcome procedural bars by demonstrating he is actually innocent such that the failure to consider his petition would result in a fundamental miscarriage of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018).

In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence. *See Bousley v. United States*, 523 U.S. 614, 623 (1998). A petitioner is entitled to an evidentiary hearing regarding a gateway claim of actual innocence if he raises specific factual allegations that would “show that it is more likely than not that no reasonable juror would have convicted him in the light of . . . new evidence.” *Berry v. State*, 131 Nev. 957, 965, 363 P.3d 1148, 1154 (2015) (internal quotation marks omitted). As stated previously, Rencher’s claim did not implicate the jurisdiction of the courts. *See Nev. Const. art. 6, § 6; NRS 171.010*. In addition, Rencher did not attempt to demonstrate he is factually innocent. Because Rencher’s claim failed to support a valid actual-innocence claim, the district court properly denied the petition without conducting an evidentiary hearing concerning his actual-innocence claim. *See Berry*, 131 Nev. at 967, 363 P.3d at 1155.

Finally, Rencher failed to overcome the presumption of prejudice to the State. See NRS 34.800(2). Therefore, the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. William D. Kephart, District Judge
Eddie Rencher, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²On appeal, Rencher argues he is entitled to the granting of a petition for a writ of mandamus directing the governor to investigate his claims. However, Rencher did not file a petition for a writ of mandamus before the district court in this matter and we decline to consider such relief in the first instance on appeal. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).