

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAREAL EDWARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78181-COA

FILED

FEB 18 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jareal Edwards appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 6, 2017, and a supplemental petition filed on September 12, 2018. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Edwards filed his petition four years after entry of the judgment of conviction on August 13, 2013.¹ Thus, Edwards' petition was untimely filed. *See* NRS 34.726(1). Moreover, Edwards' petition was successive because he had previously filed three 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.² *See* NRS 34.810(2). Edwards' petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

¹Edwards did not appeal from his judgment of conviction.

²*Edwards v. State*, Docket No. 72555-COA (Order of Affirmance, February 14, 2018); *Edwards v. State*, Docket No. 66491 (Order of Affirmance, March 11, 2015). It does not appear that Edwards appealed from the denial of the petition he filed on November 28, 2016.

First, Edwards claims the district court erred by denying his claim that federal equitable tolling standards should excuse the procedural bars. However, the Nevada Supreme Court has rejected federal equitable tolling because the plain language of NRS 34.726 “requires a petitioner to demonstrate a legal excuse for any delay in filing a petition.” *Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 874 (2014). Therefore, we conclude the district court did not err by denying this claim.

Second Edwards claims the district court erred by denying his claim that he could overcome the procedural bars because he was actually innocent. A district court may excuse a procedural bar if the petitioner demonstrates that failure to consider the petition would result in a fundamental miscarriage of justice. *Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). A colorable showing of actual innocence may overcome a procedural bar under the fundamental miscarriage of justice standard. *Pellegrini v. State*, 117 Nev. 860, 34 P.3d 519 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). To demonstrate actual innocence a “petitioner must show that it is more likely than not that no reasonable juror would have convicted him in light of new evidence.” *Berry*, 131 Nev. at 966, 363 P.3d at 1154 (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). “[A]ctual innocence means factual innocence, not mere legal insufficiency.” *Bousley v. United States*, 523 U.S. 614, 623 (1998) (internal quotation marks omitted).

In his petition, Edwards claimed he was actually innocent because the kidnapping was incidental to the robbery and he could not be convicted of both. The district court found this claim challenged the legal sufficiency of the charge and not Edwards’ factual innocence. Substantial evidence supports the decision of the district court. Further, Edwards did not allege new evidence that demonstrated he was actually innocent. Therefore, we conclude the district court did not err by denying this claim.

