

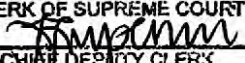
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GABRIEL SANTACRUZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79038-COA

FILED

APR 27 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Gabriel Santacruz appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on March 17, 2016. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

First, Santacruz claims the district court erred by concluding his petition was procedurally barred pursuant to NRS 34.726(1). He argues that his petition was filed only one year and three days after the original judgment of conviction was entered and it was filed within one year after the amended judgment of conviction was entered. And he asserts that he did not know about the original judgment of conviction because defense counsel only provided him with a copy of the amended judgment of conviction.

“NRS 34.726(1) provides that a post-conviction petition for a writ of habeas corpus must be filed within one year after entry of the judgment of conviction, if no direct appeal was taken, unless the petitioner demonstrates good cause for the delay.” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). To establish good cause to excuse an untimely petition, a petitioner must demonstrate the delay was not his fault and he will be unduly prejudiced if the petition is dismissed. *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 94-95 (2012). A delay is not the petitioner’s fault

when an impediment external to the defense prevented him from complying with the procedural default rules, and a petitioner is unduly prejudiced when the alleged error works to his actual and substantial disadvantage. *Id.* at 197, 275 P.3d at 95.

We conclude that Santacruz' petition was untimely filed.¹ See NRS 34.726(1). The amended judgment of conviction did not provide good cause to overcome the procedural bar because Santacruz was not challenging the proceedings leading to the substantive amendment of his judgment of conviction. See *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004). The defense counsel's failure to provide a copy of the original judgment of conviction to Santacruz did not provide good cause to overcome the procedural bar because defense counsel's actions did not constitute an impediment external to the defense. See *Hathaway*, 119 Nev. at 252, 407 P.3d at 506. Accordingly, the district court properly determined that Santacruz failed to demonstrate good cause to overcome the procedural bar to his petition.

Second, Santacruz claims the district court's failure to consider his petition will result in a fundamental miscarriage of justice. He argues he is actually innocent because "[h]e is a paranoid schizophrenic who suffered from a complete break from reality at the time of the alleged criminal conduct." A colorable showing of actual innocence may overcome a procedural bar under the fundamental miscarriage of justice standard. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Rippo v. State*, 134 P.3d 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). However, "actual innocence means factual innocence, not mere

¹The original judgment of conviction was entered on March 12, 2015, and Santacruz did not pursue a direct appeal.

legal insufficiency,” and the “petitioner must demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him.” *Bousley v. United States*, 523 U.S. 614, 623 (1998) (quotation marks omitted) (addressing actual innocence in guilty plea cases). We conclude the district court properly determined that Santacruz failed to make a colorable showing of actual innocence under this standard, and therefore, he failed to overcome the procedural bar to his petition.


Third, Santacruz claims the State of Nevada should adopt and apply the equitable tolling standard articulated in *Martinez v. Ryan*, 566 U.S. 1 (2012), to the facts of his case. However, the Nevada Supreme Court has expressly “rejected equitable tolling of the one-year filing period set forth in NRS 34.726 because the statute’s plain language 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). Consequently, we conclude the district court properly determined that equitable tolling could not be applied to overcome the procedural bar to Santacruz’ petition.

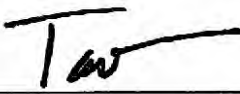
Fourth, Santacruz claims the district court erred by rejecting his underlying ineffective-assistance-of-counsel claim. However, having concluded that the district court properly determined that Santacruz’ petition was procedurally barred, we conclude Santacruz’ underlying ineffective-assistance-of-counsel claim is moot. *See Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (“[A] case becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.” (internal quotation marks omitted)).

Fifth, Santacruz claims the district court abused its discretion by denying his request for an evidentiary hearing. He specifically argues

that he was entitled to an evidentiary hearing on his colorable claim of ineffective assistance of counsel. However, we conclude the district court did not err by denying Santacruz' request for an evidentiary hearing on his procedurally barred petition. See NRS 34.770(2); *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008).

Having concluded Santacruz is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Oronoz & Ericsson, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk