

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDRICK DILLARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79681-COA

FILED

JUN 12 2020

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

ORDER OF AFFIRMANCE

Edrick Dillard appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on July 12, 2019. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Dillard filed his petition more than three years after issuance of the remittitur on direct appeal on December 2, 2015. *See Dillard v. State*, Docket No. 66643-COA (Order of Affirmance, August 27, 2015). Dillard's petition was therefore untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See* NRS 34.726(1). Dillard did not allege he could overcome the procedural bar.


In his informal brief on appeal, Dillard contends the procedural bar was equitably tolled and he claims he is actually innocent. These claims were not raised below, and we thus need not consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). We note, however, that 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). And Dillard did not

demonstrate actual innocence because he failed to show that “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

For the foregoing reasons, we conclude the district court did not err by denying Dillard’s petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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