

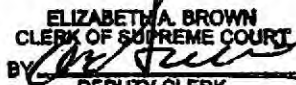
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAMIRO RODRIGUEZ-CARRILLO,  
Appellant,  
vs.  
RENEE BAKER, WARDEN,  
Respondent.

No. 79692-COA

FILED

AUG 12 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Ramiro Rodriguez-Carrillo appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus filed on December 24, 2018. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Rodriguez-Carrillo filed his petition more than two years after issuance of the remittitur on direct appeal on March 14, 2016. *See Rodriguez-Carrillo v. State*, Docket No. 68729-COA (Order of Affirmance, February 17, 2016). Thus, Rodriguez-Carrillo's petition was untimely filed. *See* NRS 34.726(1). Rodriguez-Carrillo's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice, *see id.*, 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).

Rodriguez-Carrillo argues the district court erred by denying his petition as procedurally barred because he demonstrated good cause to overcome the procedural time bar. Specifically, he claimed he had good cause because his sentence was illegal as it violated double jeopardy. He claimed that since the information listed the same date range for both his

attempted lewdness and his attempted sexual assault, these acts arose out of the same conduct and he could not be punished twice for the same conduct.

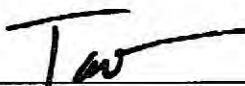
This claim was always available to be raised, and Rodriguez-Carrillo failed to demonstrate why he was unable to file this claim in a timely filed postconviction petition. *See Hathaway v. State*, 119 Nev. 248, 253, 71 P.3d 503, 506 (2003) (“[A] claim or allegation that was reasonably available to the petitioner during the statutory time period would not constitute good cause to excuse the delay.”). Further, to the extent Rodriguez-Carrillo relied on *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996), to argue that claims regarding an illegal sentence can be considered at any time, Rodriguez-Carrillo was in error. The procedural bars are mandatory in habeas corpus, and there is no exception based on a claim of sentencing error. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005); *see also* NRS 34.726(1). Therefore, we conclude the district court did not err by denying this claim.

Rodriguez-Carrillo also argues the district court erred by denying his petition as procedurally barred because the failure to consider his claims on the merits would result in a fundamental miscarriage of justice. In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence. *Bousley v. United States*, 523 U.S. 614, 623 (1998); *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). Rodriguez-Carrillo’s claims involved legal innocence, not factual innocence. Therefore, we conclude the district court did not err by

denying this claim. Accordingly, we conclude the district court did not err by denying the petition as procedurally time barred, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Egan K. Walker, District Judge  
Ramiro Rodriguez-Carrillo  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk