

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM PAUL BRIGGS,
Appellant,
vs.
THE HONORABLE GUS SULLIVAN,
PAHRUMP TOWNSHIP JUSTICE OF
THE PEACE,
Respondent.

No. 80514-COA

FILED

SEP 28 2020

ELIZABETH A. SPURDEN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

William Paul Briggs appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on October 20, 2017. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Briggs's petition was untimely because it was filed more than one and a half years after the judgment of conviction was entered on March 15, 2016.¹ See NRS 34.726(1). Therefore, his petition was procedurally barred absent a demonstration of good cause for the delay or a showing that

¹Briggs was convicted of domestic battery first offense in the justice court, and his untimely direct appeal was dismissed by the district court. Consequently, the proper date for measuring the timeliness of his habeas petition is the date the judgment of conviction was entered. See *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

the failure to consider his claims would result in a fundamental miscarriage of justice. *See id.*; *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).

Briggs claims the district court erred by denying his untimely postconviction habeas petition without making any findings as to whether he could have established good cause to overcome the procedural bar. However, the district court was not required to make such findings and it was Briggs's burden to demonstrate good cause. *See* NRS 34.726(1); *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 94-95 (2012). Here, the district court found that Briggs failed to establish good cause for the delay in filing his petition, the district court's finding is supported by the record on appeal, and we conclude the district court did not err in this regard.

Briggs also claims the district court erred by denying his untimely postconviction habeas petition without making any findings regarding his claim of actual innocence. A colorable showing of actual innocence may overcome a procedural bar under the fundamental miscarriage of justice standard. *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. Briggs did not claim that he was actually innocent in his petition. Consequently, he did not demonstrate a fundamental miscarriage of justice sufficient to excuse the petition's procedural defect or show that the district

court erred by failing to make findings regarding a claim of actual innocence.

Having concluded Briggs is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kimberly A. Wanker, District Judge
The Law Office of Kristina Wildeveld & Associates
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

²To the extent Briggs claims the district court erred by failing to conduct an evidentiary hearing on his alleged good cause and actual innocence claims, he failed to demonstrate that an evidentiary hearing was warranted. *See Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008).