

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN PERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80441-COA

FILED

OCT 28 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Steven Perry appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Perry filed his petition on August 19, 2019, more than 12 years after issuance of the remittitur on direct appeal on October 24, 2006. *Perry v. State*, Docket No. 44599 (Order of Affirmance, September 27, 2006). Thus, Perry's petition was untimely filed. See NRS 34.726(1). Moreover, Perry's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.¹ See NRS

¹Perry filed a postconviction petition for a writ of habeas corpus in the district court on March 7, 2007. Perry's untimely notice of appeal from the district court's decision to deny that petition was dismissed for lack of jurisdiction. *Perry v. State*, Docket No. 51245 (Order Dismissing Appeal, April 18, 2008).

34.810(1)(b)(2); NRS 34.810(2). Perry's petition was procedurally barred absent a demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3), 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).

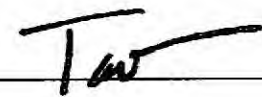
First, Perry urged Nevada to adopt federal equitable tolling standards and asserted the facts of this case would qualify for federal equitable tolling. However, the Nevada Supreme Court has rejected federal equitable tolling because the good cause requirement of NRS 34.726 requires a legal excuse for any delay in filing a petition. *See Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 874 (2014). Therefore, the district court did not err by concluding Perry failed to demonstrate good cause.

Second, Perry claimed he would suffer from a fundamental miscarriage of justice if his claims were not considered on their merits because he is actually innocent. Perry based his actual-innocence claim upon an assertion that the trial court improperly instructed the jury regarding adoptive admissions and his counsel failed to recognize this error. Perry 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 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). We therefore conclude the district court did not err by denying relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk