

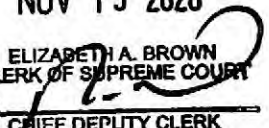
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY D. JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81043-COA

FILED

NOV 13 2020

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

ORDER OF AFFIRMANCE

Anthony D. Johnson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus and a motion for modification of sentence. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Postconviction petition for a writ of habeas corpus

Johnson argues the district court erred by denying his petition as procedurally barred. Johnson's June 6, 2019, 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 34.810(1)(b)(2); NRS 34.810(2). Johnson's petition was procedurally barred absent a demonstration of good cause and actual prejudice, see NRS 34.810(1)(b); NRS 34.810(3), or that he was actually

¹Johnson filed a postconviction petition for a writ of habeas corpus in the district court on August 1, 2018, but he did not appeal from the district court's order denying that petition.

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).²

Johnson did not attempt to demonstrate good cause. Rather, Johnson appeared to claim the procedural bars should not apply because he is actually innocent. Johnson based this claim upon an assertion that his counsel was ineffective for failing to utilize exculpatory evidence to challenge the victim's version of events or attempt to demonstrate that she was not injured. The district court considered Johnson's ineffective-assistance-of-counsel claim and determined it lacked merit. Based on our review of the record, we conclude the district court properly denied relief because Johnson 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.

²Johnson contends the district court erred by finding this petition was procedurally barred pursuant to NRS 34.726(1). We conclude the district court should not have found the petition was procedurally barred pursuant to NRS 34.726(1), because Johnson's petition was filed less than one year after the Nevada Supreme Court issued its order granting Johnson the voluntary dismissal of his direct appeal on March 13, 2019. *See Johnson v. State*, Docket No. 75630 (Order Dismissing Appeal, March 13, 2019); *Gonzales v. State*, 118 Nev. 590, 596 n.18, 53 P.3d 901, 904 n.18 (2002) (recognizing that where a timely direct appeal is voluntarily dismissed, the one-year time period for filing a postconviction petition for a writ of habeas corpus commences from the date of entry of the order granting the motion to voluntarily dismiss the appeal). Nevertheless, because the district court reached the correct result by denying the petition, we affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).


411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). We therefore conclude the district court did not err by denying Johnson's petition.

Motion for modification of sentence

In his March 14, 2019, motion, Johnson claimed his consecutive sentences violated the Double Jeopardy Clause and requested to be allowed to serve his terms concurrently. Johnson's claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any of the claims raised in the motion, we conclude the district court did not err by denying the motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Anthony D. Johnson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk