

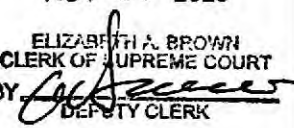
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES ERIC STEWART,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 80980-COA

FILED

NOV 23 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Charles Eric Stewart appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 26, 2020. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Stewart filed his petition more than 12 years after issuance of the remittitur on direct appeal on July 5, 2007. *See Stewart v. State*, Docket No. 48370 (Order of Affirmance, June 8, 2007). Thus, Stewart's petition was untimely filed. *See* NRS 34.726(1). Moreover, Stewart'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 34.810(1)(b)(2); NRS 34.810(2). Stewart'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).

In his petition, Stewart claimed he had good cause to overcome the procedural bars because his claims were based on new case law from the United States Supreme Court in *McCoy v. Louisiana*, 584 U.S. ___, 138 S. Ct. 1500 (2018). The district court concluded Stewart did not file his petition within a reasonable time because Stewart filed his petition more than one year after *McCoy* was decided. We conclude the district court did not err by denying this claim on this ground. See *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (stating that a claim of good cause must be raised within one year of being available).

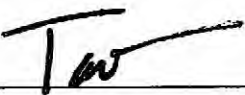
Stewart also appeared to claim he had good cause because he was actually innocent. Stewart claimed he was innocent because he has always maintained his innocence. Stewart failed to demonstrate actual innocence because he failed to allege that new evidence demonstrated he was actually innocent. See *Calderon v. Thompson*, 523 U.S. 538, 559 (1998)

¹*Stewart v. State*, Docket No. 51246 (Order of Affirmance, March 5, 2009).

(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*, 134 Nev. at 423 n.12, 423 P.3d at 1097 n.12. Therefore, we conclude the district did not err by denying this claim.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Charles Eric Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk