

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARVIN WALLACE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81117-COA

FILED

DEC 08 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Marvin Wallace appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Wallace filed his petition on January 17, 2020, more than eight years after entry of the judgment of conviction on August 23, 2011.¹ Thus, Wallace's petition was untimely filed. *See* NRS 34.726(1). Wallace'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). Further, because the State specifically pleaded laches, Wallace was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

¹Wallace did not pursue a direct appeal.

First, Wallace appeared to claim that the procedural bars did not apply to his petition because the district court lacked subject matter jurisdiction concerning his case. Wallace based his jurisdictional claim upon assertions that the Nevada Revised Statutes were invalid as they failed to contain enacting clauses and the bill authorizing creation of the Nevada Revised Statutes was not properly introduced or considered by the Legislature and Governor. Wallace's claim did not implicate the jurisdiction of the courts and therefore he failed to demonstrate the procedural bars did not apply to his petition. See Nev. Const. art. 6, § 6; NRS 171.010; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (“[T]he term jurisdiction means . . . the court’s statutory or constitutional power to adjudicate the case.” (internal quotation marks omitted)). We note the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes simply reproduce those laws as classified, codified, and annotated by the Legislative Counsel. See NRS 220.110; NRS 220.120.

Second, Wallace argued the State withheld exculpatory, material video-surveillance evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). A valid *Brady* claim can constitute good cause and prejudice sufficient to excuse the procedural bars. *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003) (“[P]roving that the State withheld the evidence generally establishes cause, and proving that the withheld evidence was material establishes prejudice.”). Wallace has conceded he was informed the State does not possess the pertinent surveillance video and asserts that the State improperly failed to collect it. Wallace thus does not meet his burden to plead and prove specific facts to establish that the State actually

withheld the surveillance video. *See id.* Accordingly, we conclude the district court did not err by denying this good-cause claim.

Third, Wallace argued his claims should be reviewed on the merits because he is actually innocent. Wallace contended information contained in the police reports showed that another person may have killed the victim and his trial-level counsel failed to properly utilize this information when preparing a defense. Wallace also asserted that he acted in self-defense after the victim attacked him. Wallace 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 Wallace’s petition as procedurally barred.

Fourth, Wallace failed to overcome the presumption of prejudice to the State. See NRS 34.800(2). Therefore, the district court did not err by denying the petition as procedurally barred.

Fifth, Wallace argues on appeal that the district court erred by denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record and, if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008). Because Wallace did not allege facts that demonstrated his actual innocence or cause for his delay, he fails to

demonstrate the district court erred by declining to conduct an evidentiary hearing concerning his procedurally-barred claims. *See id.* at 1046 n.53, 194 P.3d at 1234 n.53 (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars).


Sixth, Wallace claims the district court erred by declining to appoint postconviction counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.* However, the district court found that the issues in this matter were not difficult, Wallace was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. *See* NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Therefore, the district court declined to appoint postconviction counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion.

Seventh, Wallace argues the district court erred by denying the petition without granting him additional time to file supplemental pleadings. The district court has the discretion to allow a petitioner to file documents to supplement the initial petition. *See* NRS 34.750(5); *State v. Powell*, 122 Nev. 751, 757-58, 138 P.3d 453, 458 (2006). Here, the district court did not grant Wallace permission to file any additional documents, and Wallace does not demonstrate the district court abused its discretion in this regard. Therefore, we conclude Wallace is not entitled to relief.

Eighth, Wallace argues the district court denied his petition because it was biased against him. However, adverse rulings are insufficient to demonstrate a district court judge was biased against a party, *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789-90, 769 P.2d 1271, 1275 (1988), and Wallace failed to demonstrate he is entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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