

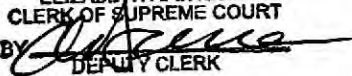
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICK EDWARD WILCOCK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80172-COA

FILED

DEC 21 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Patrick Edward Wilcock appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Wilcock filed his petition on May 16, 2019, almost four years after issuance of the remittitur on direct appeal on June 23, 2015. *Wilcock v. State*, Docket No. 62804 (Order of Affirmance, May 29, 2015). Thus, Wilcock's petition was untimely filed. See NRS 34.726(1). Moreover, Wilcock'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). Wilcock's petition was procedurally barred

¹*Wilcock v. State*, Docket No. 69810-COA (Order of Affirmance, February 23, 2017).

absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

First, Wilcock contended he had good cause because the State withheld information concerning a witness's criminal history and arrest record in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Wilcock requested information concerning the witness's criminal history prior to trial. Wilcock acknowledged that the State provided information concerning a number of the witness's prior convictions and the witness testified regarding a portion of his criminal history. However, Wilcock asserted the witness had additional prior convictions and arrests that were not disclosed and the information would have worked to impeach the witness's credibility.

"To prove a *Brady* violation, the accused must make three showings: (1) the evidence is favorable to the accused, either because it is exculpatory or impeaching; (2) the State withheld the evidence, either intentionally or inadvertently; and (3) prejudice ensued, i.e., the evidence was material." *State v. Huebler*, 128 Nev. 192, 198, 275 P.3d 91, 95 (2012) (internal quotation marks omitted). Where a defendant made a specific request for information, that information "is material if there exists a reasonable possibility that the claimed evidence would have affected the judgment of the trier of fact, and thus the outcome of the trial." *Jimenez v. State*, 112 Nev. 610, 619, 918 P.2d 687, 692 (1996) (internal quotation marks omitted) (emphasis omitted).

When a claim alleging withheld exculpatory evidence is raised in a procedurally barred postconviction petition for a writ of habeas corpus,

“the petitioner has the burden of pleading and proving specific facts that demonstrate good cause and prejudice to overcome the procedural bars.” *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003). “Good cause and prejudice parallel the second and third *Brady* components; in other words, proving that the State withheld the evidence generally establishes cause, and proving that the withheld evidence was material establishes prejudice.” *Id.*

The relevant witness testified at trial that he was serving a prison sentence, had been arrested multiple times, and had multiple prior felonies that included crimes involving dishonesty. And even excluding the witness’s testimony, significant evidence of Wilcock’s guilt was presented at trial. Cell phone data demonstrated Wilcock’s phone was in the area around the victim’s residence when the victim died. The victim’s neighbor saw Wilcock at the victim’s residence days after the victim died. Shortly after the victim died, Wilcock pawned items owned by the victim and placed items owned by the victim for sale on the internet. A search of Wilcock’s mother’s residence also revealed additional items that belonged to the victim. In addition, Wilcock had a .25 caliber handgun and the victim was killed with a .25 caliber bullet. Wilcock also participated in an interview with a detective and provided details about the location of the victim’s body that he would only have known if he had seen the body.

Because the witness testified at trial to his extensive criminal record, and in light of the significant evidence of Wilcock’s guilt presented at trial, Wilcock did not demonstrate a reasonable possibility that additional information concerning the witness’s criminal record or arrest

history would have affected the outcome of the trial. And because Wilcock did not demonstrate the withheld evidence was material, we conclude the district court properly decided that Wilcock did not demonstrate actual prejudice sufficient to overcome the procedural bars. Therefore, we conclude the district court did not err by denying this good cause claim.

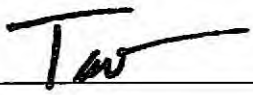
Second, Wilcock argued he had good cause to overcome the procedural bars because his trial counsel was ineffective for failing to conduct an investigation into the witness's criminal history and arrest record. As explained previously, Wilcock did not demonstrate additional information concerning the witness's criminal history or arrest record had a reasonable possibility of altering the outcome of the trial. Accordingly, Wilcock failed to demonstrate this alleged error "worked to his actual and substantial disadvantage, in affecting the state proceeding with error of constitutional dimensions," *Hogan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (internal quotation marks omitted), and thus Wilcock failed to demonstrate actual prejudice sufficient to overcome the procedural bars. Therefore, we conclude the district court did not err by denying this good cause claim.


Finally, Wilcock 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 Wilcock did not allege facts that demonstrated actual prejudice sufficient to overcome the procedural bars,

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). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Douglas W. Herndon, District Judge
Federal Public Defender/Las Vegas
Federal Public Defender/Reno
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk