

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DELBERT CHARLES COBB,  
Appellant,  
vs.  
JO GENTRY, WARDEN,  
Respondent.

No. 80396-COA

**FILED**

MAR 25 2021

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

*ORDER OF AFFIRMANCE*

Delbert Charles Cobb appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Cobb argues the district court erred by denying his petition as procedurally barred. Cobb filed his petition on September 19, 2017, seven years after issuance of the remittitur on direct appeal on August 2, 2010. *Cobb v. State*, Docket No. 50346 (Order of Affirmance, July 6, 2010). Thus, Cobb's petition was untimely filed. See NRS 34.726(1). Moreover, Cobb'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.<sup>1</sup> See NRS 34.810(1)(b)(2); NRS

---

<sup>1</sup>*Cobb v. State*, Docket No. 61929 (Order of Affirmance, May 13, 2014).

34.810(2).<sup>2</sup> Cobb'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).

Cobb argued he is actually innocent and the failure to consider his claims on the merits would result in a fundamental miscarriage of justice. In support of this claim, Cobb contended a victim stated that Cobb was not the shooter. Cobb also asserted that a recent report called into question the reliability of the tool mark expert testimony that linked shell casings from the shooting at issue in this matter to a shooting for which Cobb had previously been convicted.

To prove actual innocence as a gateway to reach procedurally-barred constitutional claims of error, a petitioner must 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*

---

<sup>2</sup>The district court found Cobb's petition was procedurally barred pursuant to NRS 34.726(1), but did not apply the procedural bars contained within NRS 34.810(1)(b)(2), (2) to Cobb's petition. "[A]pplication of the statutory procedural default rules to postconviction habeas petitions is mandatory." *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Therefore, the district court should have applied those procedural bars to Cobb's petition. We nevertheless affirm the district court's order because it reached the correct result in denying the petition. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

*grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). The district court “must make its determination concerning the petitioner’s innocence in light of all the evidence,” including a review of “both the reliability of the new evidence and its materiality to the conviction being challenged, which in turn requires an examination of the quality of the evidence that produced the original conviction.” *Berry*, 131 Nev. at 968, 363 P.3d at 1155. Then, the district court must “assess how reasonable jurors would react to the overall, newly supplemented record.” *Id.* at 968, 363 P.3d at 1156.

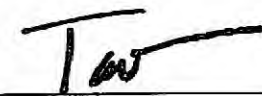
The district court set an evidentiary hearing in this matter, but Cobb declined to call witnesses to testify at that hearing. The district court noted that the victim’s statements were presented during the proceedings for Cobb’s previous postconviction petition and the district court judge in that proceeding found the victim’s statements to be unbelievable. The district court again reviewed the victim’s statements regarding Cobb’s involvement and found that reasonable jurors would not view that victim’s statements as credible. The district court also reviewed the information Cobb provided regarding the reliability of the firearm tool mark testimony, but found that information was insufficient to undermine confidence in the result of the trial. *See id.* at 966, 363 P.3d at 1154. The district court found that, in consideration of all the evidence, Cobb did not demonstrate that it is more likely than not that no reasonable juror would have convicted him in light of new evidence.

The record supports the district court’s decision, particularly in light of the strong evidence of Cobb’s guilt presented at trial. The evidence

included Cobb's admission that he was present when the shooting occurred, evidence demonstrating Cobb's efforts to attack persons he believed were members of rival street gangs, and evidence demonstrating the victims were shot with the type of .22 caliber firearm that Cobb had previously admitted using when shooting others. Therefore, we conclude the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. David M. Jones, District Judge  
Federal Public Defender/Las Vegas  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk