

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEANGELO LAMONT MITCHELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82127-COA

**FILED**

APR 23 2021

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

*ORDER OF AFFIRMANCE*

Deangelo Lamont Mitchell appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Mitchell filed his petition on August 17, 2020, more than 18 years after issuance of the remittitur on direct appeal on August 6, 2002. *Mitchell v. State*, Docket No. 37531 (July 10, 2002). Thus, Mitchell's petition was untimely filed. See NRS 34.726(1). Moreover, Mitchell'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 petitions.<sup>1</sup> See NRS 34.810(1)(b)(2); NRS

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<sup>1</sup>*Mitchell v. State*, Docket No. 76899 (Order of Affirmance, March 15, 2019); *Mitchell v. State*, Docket No. 69542 (Order Dismissing in Part and Affirming in Part, February 17, 2017); *Mitchell v. State*, Docket No. 53085 (Order of Affirmance, January 7, 2010); *Mitchell v. State*, Docket No. 42638 (Order of Affirmance, March 27, 2006).

34.810(2). Mitchell'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). Further, because the State specifically pleaded laches, Mitchell was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).


In his petition, Mitchell contended the procedural bars should not apply to his petition because he was actually innocent. Mitchell asserted he was innocent because the statutes concerning first-degree murder and liability as an aider and abettor were unconstitutionally vague. To demonstrate actual innocence, 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 grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). A petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence. *Bousley v. United States*, 523 U.S. 614, 623 (1998).

Mitchell's claim involved legal, not factual innocence. Because Mitchell did not allege he was factually innocent, he did not make a colorable showing of actual innocence and, therefore, failed to demonstrate the procedural bars should not apply to his petition. Mitchell also failed to

overcome the presumption of prejudice to the State. Accordingly, we conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Jacqueline M. Bluth, District Judge  
Deangelo Lamont Mitchell  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk