

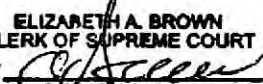
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LOUIS DWAYNE MARKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82023-COA

FILED

JUN 07 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Louis Dwayne Marks 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.

Marks argues the district court erred by denying his petition as procedurally barred. Marks filed his petition on June 4, 2020, more than five years after entry of the judgment of conviction on May 21, 2015, and more than three years after entry of an amended judgment of conviction on February 17, 2017.¹ Thus, Marks' petition was untimely filed. *See* NRS 34.726(1). Marks' 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).

First, Marks appeared to claim he had cause for his delay because his counsel should have pursued a direct appeal to challenge his sentence. However, claims stemming from counsel's failure to pursue a direct appeal were reasonably available to be raised in a timely manner

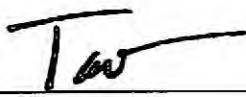
¹Marks did not pursue a direct appeal following entry of either of the judgments of conviction.

from entry of both of the judgments of convictions, and Marks did not attempt to explain his delay in raising this claim. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Therefore, Marks was not entitled to relief based upon this good-cause claim.

Second, Marks claimed the procedural bars should not apply because he was actually innocent of his sentence. Marks contended his sentence for the deadly weapon enhancement was illegal because use of a weapon was an essential element of the primary offense of second-degree murder. Marks 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 Marks' petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Louis Dwayne Marks
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk