

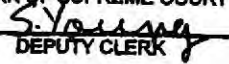
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WESLIE HOSEA MARTIN,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 82658-COA

FILED

JUL 21 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Weslie Hosea Martin appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

Martin argues the district court erred by denying his petition as procedurally barred. Martin filed his petition on May 27, 2020, more than two years after entry of a judgment of conviction on February 14, 2018,¹ and more than one year after entry of an amended judgment of conviction filed on September 10, 2018. Thus, Martin's petition was untimely filed. *See* NRS 34.726(1). Moreover, Martin's petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² *See* NRS 34.810(2). Martin's petition was procedurally barred absent a demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS 34.810(3), or that he was actually innocent such that it would result in a fundamental miscarriage of justice

¹Martin did not pursue a direct appeal from the original judgment of conviction.

²*Martin v. State*, Docket No. 79531-COA (Order of Affirmance, April 28, 2020).

were his claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).

First, Martin appears to argue on appeal that he did not need to demonstrate good cause because the petition was timely filed from the dismissal of his appeal from the amended judgment of conviction. *See Martin v. State*, Docket No. 77017 (Order Dismissing Appeal, April 22, 2019). An amended judgment of conviction does not automatically restart the one-year time limit to file a timely postconviction habeas petition. *See Sullivan v. State*, 120 Nev. 537, 540, 96 P.3d 761, 763-64 (2004). And even if it did, Martin's petition was filed more than one year after the filing of the order granting his motion for voluntary dismissal of the appeal from the amended judgment. *See Martin v. State*, Docket No. 77017 (Order Dismissing Appeal, April 22, 2019). Therefore, his petition was nevertheless untimely. *See Gonzales v. State*, 118 Nev. 590, 596 n.18, 53 P.3d 901, 904 n.18 (2002) (“[W]here a timely direct appeal is voluntarily dismissed, the one-year time period for filing a post-conviction petition under NRS 34.726 commences to run from date of entry of this court's order granting the motion for voluntary dismissal.”). Martin did not explain why he waited more than a year to raise his claims. *See Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (holding a good-cause claim must be raised within one year of its becoming available).


Second, Martin appeared to argue that the procedural time bar should not be applied because he is actually innocent. However, Martin 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*, 134 Nev. at 423 n.12, 423 P.3d at 1097 n.12.

Finally, Martin appears to argue on appeal that he has good cause because he was prevented from filing pro se motions while he was represented by counsel. However, Martin did not raise this issue in his petition, and we decline to consider it on appeal in the first instance. See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

For the foregoing reasons, we conclude the district court did not err by denying Martin's petition as procedurally barred. Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jasmin D. Lilly-Spells, District Judge
Weslie Hosea Martin
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk