

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD DONTA SATTERFIELD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82697-COA

FILED

OCT 07 2021

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

ORDER OF AFFIRMANCE

Richard Donta Satterfield appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

The district court denied Satterfield's July 20, 2020, petition as procedurally barred. Satterfield filed his petition more than eleven years after issuance of the remittitur on direct appeal on June 2, 2009. *See Satterfield v. State*, Docket No. 50260 (Order of Affirmance, May 5, 2009). Thus, Satterfield's petition was untimely filed. *See* NRS 34.726(1). Moreover, Satterfield'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). Satterfield'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

¹*Satterfield v. State*, Docket No. 59171 (Order of Affirmance, February 13, 2013).

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, relying in part on *Martinez v. Ryan*, 566 U.S. 1 (2012), Satterfield argued that ineffective assistance of postconviction counsel excused his procedural defects. Ineffective assistance of postconviction counsel would not be good cause in the instant case because the appointment of counsel in the prior postconviction proceedings was not statutorily or constitutionally required. *See Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996). Further, the Nevada Supreme Court has held that *Martinez* does not apply to Nevada's statutory postconviction procedures, *see Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014), and thus, *Martinez* does not provide good cause for this late, successive, and abusive petition. Therefore, the district court did not err by denying this good-cause claim.

Second, Satterfield 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, Satterfield asserted that he had an affidavit from prosecution witness Shawn Clay in which Clay recanted his trial testimony. Satterfield also asserted that he signed an affidavit in which he stated that he was innocent.

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) (*accord 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). 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.

Satterfield did not provide specific allegations concerning the contents of either affidavit. Moreover, even excluding Clay’s trial testimony, three additional eyewitnesses testified at trial that Satterfield shot the victim. In addition, the Nevada Supreme Court found on direct appeal that overwhelming evidence of Satterfield’s guilt was presented at trial. *See Satterfield v. State*, Docket No. 50260 (Order of Affirmance, May 5, 2009).

The information Satterfield provided concerning Clay’s recantation of his trial testimony and Satterfield’s own assertion of his innocence were insufficient to undermine the confidence in the result of the trial. *See Berry*, 131 Nev. at 966, 363 P.3d at 1154. In light of the strong evidence of guilt presented at trial, Satterfield did not demonstrate that it is more likely than not that no reasonable juror would have convicted him in light of the new alleged evidence. Therefore, we conclude the district court did not err by denying this actual-innocence claim.

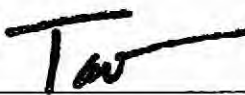
Next, Satterfield requested the appointment of postconviction counsel. NRS 34.750(1) provides for the discretionary appointment of

postconviction counsel if the petitioner is indigent and the petition is not summarily dismissed. Here, the district court found the petition was procedurally barred pursuant to NRS 34.810(2) and declined to appoint counsel. Because the petition was subject to summary dismissal, *see* NRS 34.745(4), we conclude the district court did not abuse its discretion by declining to appoint counsel.

Finally, Satterfield appeared to argue that the district court should conduct an evidentiary hearing concerning the merits of his claims. To warrant an evidentiary hearing, a petitioner must raise claims 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 Satterfield did not demonstrate either good cause or actual innocence sufficient to overcome application of the procedural bars, he failed to demonstrate the district court should have conducted an evidentiary hearing concerning his procedurally barred claims. *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. Carli Lynn Kierny, District Judge
Richard Donta Satterfield
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk