

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDDIE RENCHER, JR.,
Appellant,
vs.
JERRY HOWELL, WARDEN,
Respondent.

No. 83514-COA

FILED

APR 11 2022

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

ORDER OF AFFIRMANCE

Eddie Rencher, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 24, 2021. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Rencher's petition was filed more than 11 years after issuance of the remittitur on direct appeal on December 6, 2009. *See Rencher v. State*, Docket No. 52355 (Order of Affirmance, November 5, 2009). Thus, Rencher's petition was untimely filed. *See* NRS 34.726(1). Moreover, Rencher's petition was successive as he had previously filed three postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Rencher's petition was procedurally barred absent a demonstration of good cause and

¹*See Rencher v. State*, No. 78199-COA, 2020 WL 589519 (Nev. Ct. App. Feb. 04, 2020) (Order of Affirmance); *Rencher v. State*, No. 67459-COA, 2015 WL 3825307 (Nev. Ct. App. June 16, 2015) (Order of Affirmance); *Rencher v. State*, No. 59289, 2012 WL 2192230 (Nev. June 13, 2012) (Order of Affirmance).

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). Moreover, because the State specifically pleaded laches, Rencher was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).


Rencher claimed the ineffective assistance of trial counsel excused the procedural bars. Rencher's claims of ineffective assistance of trial counsel were available to be raised in a timely postconviction petition and were therefore themselves procedurally defaulted. Therefore, the claims did not provide good cause to overcome the procedural bars. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Rencher also claimed that the procedural bars should not be applied because he is actually innocent. Rencher offered the declaration of a psychiatrist to challenge "the veracity and authenticity of the testimonies of the State's child witnesses" and the affidavit of a doctor to challenge the testimony of a nurse who examined the victim. 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). Rencher's evidence challenged the legal sufficiency of the evidence against him, not his factual innocence, and he failed to demonstrate that no reasonable juror

would have convicted him in light of all of the evidence. Therefore, this claim did not provide good cause to overcome the procedural bars.

Finally, Rencher failed to overcome the presumption of prejudice to the State. See NRS 34.800(2). Therefore, 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. Monica Trujillo, District Judge
Eddie Rencher, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk