

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID ANDREW COIL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84107-COA

FILED

JUL 20 2022

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

ORDER OF AFFIRMANCE

David Andrew Coil appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Coil filed his petition on August 11, 2021, more than one year after issuance of the remittitur on direct appeal on November 12, 2019. *Coil v. State*, No. 74949-COA, 2019 WL 5258445 (Nev. Ct. App. Oct. 16, 2019) (Order of Affirmance). Thus, Coil's petition was untimely filed. *See* NRS 34.726(1). Coil's 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).


Coil did not contend he had good cause to overcome the procedural bars but rather appeared to assert that his claims should be considered on the merits because he is actually innocent. However, Coil 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)

(quotation marks omitted); accord *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). Therefore, Coil did not demonstrate that the district court erred by denying relief.

Next, Coil appears to argue on appeal that the district court should have conducted 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 1,224, 1233-34 (2008). Because Coil did not demonstrate 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.31 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. Tierra Danielle Jones, District Judge
David Andrew Coil
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk