

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN DAVID PAMPLIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84828-COA

FILED

SEP 29 2022

HELEN M. BROWN  
CLERK OF SUPREME COURT  
*H. Brown*  
CLERK

*ORDER OF AFFIRMANCE*

John David Pamplin appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Pamplin argues the district court erred by denying his petition without first conducting an evidentiary hearing. Pamplin filed his petition on February 16, 2022, more than 19 years after entry of the judgment of conviction on October 4, 2002.<sup>1</sup> Thus, Pamplin's petition was untimely filed. *See* NRS 34.726(1). Moreover, Pamplin's petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.<sup>2</sup> *See* NRS 34.810(2). Pamplin'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

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<sup>1</sup>Pamplin did not pursue a direct appeal.

<sup>2</sup>*See Pamplin v. State*, No. 80512-COA, 2020 WL 6742948 (Nev. Ct. App. Feb. 12, 2020) (Order of Affirmance); *Pamplin v. State*, No. 77530-COA, 2019 WL 5258496 (Nev. Ct. App. Oct. 16, 2019) (Order of Affirmance). Pamplin also filed petitions for a writ of habeas corpus in the district court on May 18, 2021, and September 20, 2021, but he did not appeal from the district court's denial of those petitions.

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). Further, because the State specifically pleaded laches, Pamplin was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual 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).

Pamplin did not assert that he had good cause to overcome the procedural bars. Instead, Pamplin argued that he would suffer a fundamental miscarriage of justice if his claims were not reviewed on the merits because he is actually innocent. Pamplin based his actual-innocence claim upon an assertion that he consumed alcohol, sleeping pills, and Xanax prior to the incident, and Pamplin claimed his trial-level counsel should have investigated his mental state due to his consumption of those substances. In addition, Pamplin claimed that his trial-level counsel was ineffective for failing to investigate his stab wounds. Pamplin also claimed that the altercation occurred due to his wife's affair and, as a result, even though he pleaded guilty to first-degree murder, he contends he only committed voluntary manslaughter.

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). 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. Moreover, 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).

The evidence contained within the record contained strong evidence of Pamplin’s guilt. The record in this matter demonstrates that Pamplin acknowledged that he and the victim had marital issues. The record also reveals that Pamplin stabbed the victim numerous times, including in her back, and that the victim died as a result of the stab wounds. In addition, Pamplin admitted that he attempted to commit suicide by cutting himself with a knife.

In light of the strong evidence of Pamplin’s guilt, the additional information Pamplin presented in his petition was insufficient to undermine the confidence in the result of the proceedings. *See Berry*, 131 Nev. at 966, 363 P.3d at 1154. Accordingly, Pamplin did not demonstrate that it is more likely than not that no reasonable juror would have convicted him in light of new evidence. Moreover, Pamplin’s assertions that he acted under the influence of alcohol or medication and that he only committed voluntary manslaughter were claims of legal innocence and therefore were not sufficient to demonstrate actual innocence. Thus, we conclude the district court did not err by denying this actual-innocence claim.

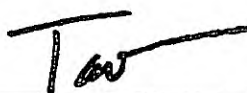
Accordingly, Pamplin failed to demonstrate actual innocence sufficient to overcome application of the procedural bars. Pamplin also failed to overcome the presumption of prejudice to the State. *See* NRS 34.800(1). We therefore conclude the district court did not err by denying Pamplin's petition as procedurally barred without conducting an evidentiary hearing.

Next, Pamplin argues the district court erred by denying the petition without allowing him to conduct discovery. Because the district court did not set an evidentiary hearing, Pamplin was not entitled to conduct discovery. *See* NRS 34.780(2). Therefore, Pamplin is not entitled to relief based upon this claim.

Finally, Pamplin appears to argue the district court erred by denying his request for 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. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Department 17  
John David Pamplin  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk