


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMEE DEIRDRE HUNDLEY, A/K/A
JAMES DERRICK HUNDLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85078-COA

FILED

JAN 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jamee Deirdre Hundley appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 22, 2022. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Hundley filed her petition nearly 23 years after issuance of the remittitur on direct appeal on May 18, 1999. *See Hundley v. State*, Docket No. 29307 (Order Dismissing Appeal, April 21, 1999).¹ Thus, Hundley's petition was untimely filed. *See* NRS 34.726(1). Hundley's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice—*see id.*, or that she was actually innocent such that it would result in a fundamental miscarriage of justice were her claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).

Hundley argues the district court erred by denying her claim that she had good cause because trial and appellate counsel were

¹Previous orders of Nevada's appellate courts refer to Hundley in the masculine. She now identifies as female.

ineffective. While the ineffective assistance of counsel may constitute good cause to excuse a procedural default, the ineffective-assistance claim must not itself be time barred. *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Here, Hundley's claims that trial and appellate counsel were ineffective were available to be raised in a timely filed petition. Therefore, Hundley failed to demonstrate good cause to overcome the procedural bar, and we conclude the district court did not err by denying this good cause claim.

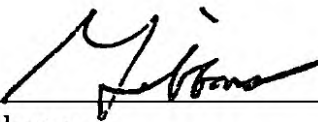
Hundley also appears to argue the district court erred by denying her petition as procedurally barred where she demonstrated that she believed that her parents were pursuing postconviction relief on her behalf prior to 2005. This good cause claim was not raised in her petition below; therefore, we decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 900 P.2d 1263, 1275-76 (1999).


Hundley also argues that her petition should not be procedurally barred because she was actually innocent. Hundley did not demonstrate actual innocence because she failed to show that "it is more likely than not that no reasonable juror would have convicted [her] 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 Ripppo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). We therefore conclude the district court did not err by denying Hundley's petition as procedurally barred.

Finally, Hundley argues the district court erred by construing the State's opposition to Hundley's motion to appoint counsel as a motion to dismiss the petition. Hundley also argues that the district court erred by

denying Hundley's petition, in part, based on the claim of laches that the State raised in its opposition. Hundley filed a reply to the opposition and was able to make arguments regarding the motion to appoint counsel and against the grounds for dismissal of the petition raised by the State in the opposition. Further, the district court considered her response when dismissing the petition. Thus, even if the district court erred by broadly construing the State's opposition, any error was harmless because the district court considered Hundley's response to the opposition when denying the petition and because the petition was otherwise procedurally time barred. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Kathleen M. Drakulich, District Judge
Jamee Deirdre Hundley
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk