

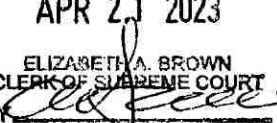
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BILLY CEPERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85125-COA

FILED

APR 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Billy Cepero appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

Cepero argues that the district court erred by denying his February 9, 2021, petition and later-filed supplement as procedurally barred. Cepero filed his petition more than nine years after issuance of the remittitur on direct appeal on October 10, 2011. *See Cepero v. State*, No. 57045, 2011 WL 4340899 (Nev. Sept. 14, 2011) (Order of Affirmance). Thus, Cepero's petition was untimely filed. *See* NRS 34.726(1). Moreover, Cepero's petition was successive because his conviction was the result of a trial and his claims were available to be raised in his previously filed petitions, and it constituted an abuse of the writ as he raised a claim new and different from those raised in his previous petitions.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Cepero's petition was procedurally barred

¹*Cepero v. State*, No. 83440-COA, 2022 WL 1714526 (Nev. Ct. App. May 26, 2022) (Order Affirming in Part and Dismissing in Part); *Cepero v. State*, No. 65785-COA, 2015 WL 1280170 (Nev. Ct. App. March 17, 2015) (Order of Affirmance).

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 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, Cepero was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

Cepero first claimed he had good cause because he recently learned that counsel was offered a global plea agreement to resolve all of his cases. However, this court has already considered and rejected this good-cause claim. *See Cepero*, No. 65785-COA, 2015 WL 1280170. Thus, the doctrine of the law of the case prevents further consideration of this claim. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Accordingly, we conclude the district court did not err by denying this good-cause claim.


Cepero next claimed that he would suffer a fundamental miscarriage of justice if his claims were not reviewed on the merits. Cepero based this claim upon his assertion that he learned that counsel was offered a global plea agreement to resolve his cases. In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence. *See Bousley v. United States*, 523 U.S. 614, 623 (1998). 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). Cepero's allegations regarding a plea offer are insufficient to demonstrate that no juror would have convicted him. *See Berry*, 131 Nev. at 969, 363 P.3d at 1156 ("It bears emphasizing that the actual-innocence 'standard is demanding and permits review only in the extraordinary case.'" (quoting *House v. Bell*, 547 U.S. 518, 538 (2006))). Therefore, we conclude that Cepero is not entitled to relief based on this claim.

Finally, Cepero did not overcome the presumption of prejudice to the State. *See* NRS 34.800(2). Accordingly, we conclude the district court did not err by denying Cepero's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Crystal Eller, District Judge
Monique A. McNeill
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk