

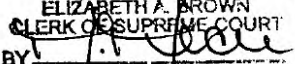
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SALLY DORIAN VILLAVERDE,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 85130-COA

FILED

APR 27 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Sally Dorian Villaverde 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.

Villaverde argues that the district court erred by denying his May 12, 2022, petition as procedurally barred. Villaverde filed his petition more than 16 years after issuance of the remittitur on direct appeal on March 14, 2006. *See Villaverde v. State*, No. 43443 (Order of Affirmance, February 15, 2006). Thus, Villaverde's petition was untimely filed. *See* NRS 34.726(1). Moreover, Villaverde's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, 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). Villaverde's petition

¹*Villaverde v. State*, No. 84026-COA, 2022 WL 2135072 (Nev. Ct. App. June 13, 2022) (Order of Affirmance); *Villaverde v. State*, No. 77563-COA, 2020 WL 399170 (Nev. Ct. App. Jan. 22, 2020) (Order Granting Rehearing and Order of Affirmance); *Villaverde v. State*, No. 51000, 2010 WL 3271248 (Nev. May 10, 2010) (Order of Affirmance).

was procedurally barred absent a demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS 34.810(1)(b), (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, Villaverde was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

Villaverde first claimed that the procedural bars should not apply because he timely filed his petition from the entry of an amended judgment of conviction on June 14, 2021. In the amended judgment of conviction, the district court granted Villaverde presentence credits. Villaverde's claims in the instant petition challenged the proceedings involving his trial and sentencing. Because Villaverde did not challenge the grant of presentence credits, the entry of the amended judgment of conviction did not provide good cause for the claims Villaverde raised in the instant petition. *See Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004) (stating that entry of an amended judgment of conviction may provide good cause for claims relating to the amended judgment that "could not have been raised in prior proceedings"). Therefore, Villaverde was not entitled to relief based on this claim.

Second, Villaverde appeared to claim that he had good cause due to the ineffective assistance of counsel. "[I]n order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Villaverde's ineffective-assistance-of-counsel claim was itself procedurally barred because he raised it in an untimely manner. And Villaverde did not demonstrate an impediment external to the defense

prevented him from raising his claim at an earlier time. *See id.* at 252-53, 71 P.3d at 506. Therefore, we conclude that Villaverde was not entitled to relief based on this claim.

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

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Tierra Danielle Jones, District Judge
Sally Dorian Villaverde
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²The Honorable Michael Gibbons did not participate in the decision in this matter.