

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH ALEXANDER HENDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85367-COA

FILED

MAY 04 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joseph Alexander Henderson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 25, 2021, and supplemental pleadings. Eighth Judicial District Court, Clark County; Bitia Yeager, Judge.

Henderson filed his petition more than 11 years after issuance of the remittitur on direct appeal on March 2, 2010. *See Henderson v. State*, Docket No. 52573 (Order of Affirmance, February 3, 2010). Thus, Henderson's petition was untimely filed. *See* NRS 34.726(1). Moreover, Henderson'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). Henderson's petition 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, Henderson was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2). A petitioner's claims to overcome procedural bars must be supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. See *Berry*, 131 Nev. at 967, 363 P.3d at 1154-55.

First, Henderson appeared to claim he had good cause for the delay because the State withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Although a valid *Brady* claim can constitute good cause to excuse the procedural bars, see *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003), a good-cause claim based on an alleged *Brady* violation must be raised "within a reasonable time after the withheld evidence was disclosed to or discovered by the defense," *State v. Huebler*, 128 Nev. 192, 198 n.3, 275 P.3d 91, 95 n.3 (2012).

¹*Henderson v. State*, No. 67059, 2015 WL 5333436 (Nev. Sept. 11, 2015) (Order of Affirmance); *Henderson v. State*, No. 62629, 2014 WL 4668400 (Nev. Sept. 18, 2014) (Order of Affirmance).

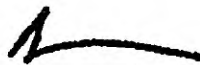
Henderson claimed he discovered the evidence while reviewing his presentence investigation report (PSI) after being in custody for 16 years. The PSI is dated August 18, 2008, and was provided to the defense prior to Henderson's August 28, 2008, sentencing hearing as evidenced by Henderson's counsel notifying the sentencing court of an error in the PSI. Henderson failed to allege facts that, if true, demonstrate he raised this claim within a reasonable time of the PSI being disclosed to the defense. Therefore, we conclude Henderson was not entitled to relief based on this good-cause claim. *See Lisle v. State*, 131 Nev. 356, 360, 351 P.3d 725, 729 (2015) (holding an alleged *Brady* violation did not constitute good cause where the petitioner admitted he had received some of the evidence years before filing his petition and failed to specify when he received the remaining evidence).

Second, Henderson appeared to claim he was actually innocent of the crimes charged because the PSI listed a codefendant who pleaded guilty in a separate case to crimes arising from the same incident. Henderson claimed that had the jury known of the existence of the codefendant, he would have been acquitted of all charges. Henderson 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) (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). Therefore, we conclude Henderson was not entitled to relief based on this good-cause claim.

Finally, Henderson 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 the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Bulla


_____, J.
Westbrook

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

To the extent Henderson raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.

cc: Hon. Bitá Yeager, District Judge
Joseph Alexander Henderson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk