

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT CHARLES JONES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85948-COA

FILED

JUL 26 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Robert Charles Jones appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Jones filed his petition on July 29, 2022, and raised claims challenging the guilt phase of his trial as well as the amended judgment of conviction. Jones filed the petition more than 36 years after issuance of the remittitur on direct appeal on November 5, 1985, *see Jones v. State*, 101 Nev. 573, 707 P.2d 1128 (1985), and 35 years after entry of the amended judgment of conviction on April 10, 1987.<sup>1</sup> Thus, Jones' petition was untimely filed. *See* NRS 34.726(1).<sup>2</sup> Moreover, Jones' petition was successive because he had previously litigated a petition for postconviction relief and several postconviction petitions for a writ of habeas corpus, and

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<sup>1</sup>Jones did not appeal from the amended judgment of conviction.

<sup>2</sup>Jones' petition was also filed more than 29 years after the effective date of NRS 34.726. *See* 1991 Nev. Stat., ch. 44, § 5, at 75-76, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018).

the instant petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.<sup>3</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2).

Jones' 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, Jones 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 or warrant an evidentiary hearing 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, Jones claimed he had good cause based on undiscovered and unrepresented evidence: Jones alleged that officers forged his arrest warrant. However, he failed to allege when he discovered the evidence. Jones thus failed to allege facts that, if true, demonstrate he raised this claim within a reasonable time of the discovery of the evidence. See *Rippo*, 134 Nev. at 422, 423 P.3d at 1097 (concluding that a claim is raised within a reasonable time when the petition is filed within one year after the factual or legal basis for the claim becomes available). Therefore, we conclude Jones was not entitled to relief based on this claim.

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<sup>3</sup>See *Jones v. State*, No. 57463, 2011 WL 2409626 (Nev. June 8, 2011) (Order of Affirmance); *Jones v. State*, No. 55603, 2010 WL 3860416 (Nev. Sept. 29, 2010) (Order of Affirmance); *Jones v. State*, Docket Nos. 37388, 37448 (Order of Affirmance, November 21, 2001). Jones filed a petition for postconviction relief on April 14, 1988, and he did not appeal its denial.

Second, Jones appeared to claim he was actually innocent of the crime charged because officers forged his arrest warrant, witnesses failed to sufficiently identify him, and his conviction was obtained through the use of perjured testimony. Jones 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 *Lisle v. State*, 131 Nev. 356, 361, 351 P.3d 725, 730 (2015) (stating an actual innocence claim “generally requires the petitioner to present new evidence of his innocence”). Therefore, we conclude Jones was not entitled to relief based on this claim.

Finally, Jones 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.

Jones argues on appeal that the district court erred by denying his petition despite the State’s failure to timely respond, which Jones claims resulted in default. The State filed a response within the 45-day period ordered by the district court. In addition, the provisions of NRS Chapter 34 do not specify a consequence relating to the disposition of a petitioner’s claims for failure to respond in postconviction habeas proceedings, and the Nevada Supreme Court has observed “that default judgments in habeas corpus proceedings are not available,” *Warden v. O’Brian*, 93 Nev. 211, 212, 562 P.2d 484, 485 (1977). Therefore, we conclude that Jones is not entitled to relief based on this claim.

Jones also argues on appeal that the district court’s failure to address his actual innocence claim on its merits and allow him to present evidence in support of his actual innocence claim denied Jones access to the

courts. Because Jones failed to allege specific facts demonstrating he was entitled to relief on his claim of actual innocence, he was not entitled to an evidentiary hearing. And Jones' ability to file his petition and additional documents in the district court indicate that he was not denied access to the court. Therefore, we conclude that Jones is not entitled to relief based on this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Erika D. Ballou, District Judge  
Robert Charles Jones  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk