

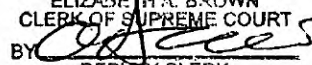
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RENE GEOVANY ALFARO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85460-COA

FILED

SEP 13 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Rene Geovany Alfaro appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 2, 2022, an amended petition filed on April 13, 2022, and a supplemental petition filed on June 29, 2022. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Alfaro argues the district court erred by denying his petition as procedurally barred without conducting an evidentiary hearing. Alfaro filed his petition more than one year after issuance of the remittitur on direct appeal on June 9, 2020.<sup>1</sup> *See Alfaro v. State*, No. 78674-COA, 2020 WL 2521766 (Nev. Ct. App. May 15, 2020 (Order of Reversal and Remand)). Thus, Alfaro's petition was untimely filed. *See* NRS 34.726(1). Alfaro's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice—*see id.*, or that he was actually

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<sup>1</sup>Alfaro's petition was also untimely from the filing of the amended judgment of conviction on October 20, 2020. Further, because Alfaro's claims challenged the proceedings regarding only the original judgment of conviction, the amended judgment did not restart the time for filing a postconviction petition. *See Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

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).

To demonstrate good cause, “a petitioner must show that an impediment external to the defense prevented [them] from complying with the state procedural default rules.” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). “An impediment external to the defense may be demonstrated by a showing that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials made compliance impracticable.” *Id.* (internal quotation marks omitted). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Alfaro argued in his petition that he had good cause because counsel failed to communicate with him regarding his appeal and he did not know his appeal status. Alfaro failed to demonstrate good cause because he failed to show that counsel’s lack of communication was an impediment external to the defense. *See Sullivan*, 120 Nev. at 542, 96 P.3d at 765 (holding that counsel’s failure to send the defendant a copy of the remittitur and failure to inform him regarding the one-year time limit for filing a petition was not an impediment external to the defense). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Alfaro argued that he had good cause because he timely filed his petition but did so in the wrong court. Alfaro attached a copy of a petition that was filed in federal district court on July 2, 2021. Sending the

petition to the wrong court is not an impediment external to the defense, and even if it were, a petition filed on July 2, 2021, would still have been untimely. *See Gonzales v. State*, 118 Nev. 590, 595, 53 P.3d 901, 903-04 (2002) (declining to extend the prison mailbox rule to postconviction petitions for a writ of habeas corpus). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.<sup>2</sup>

Third, Alfaro argued that he had good cause because of the COVID-19 lockdown and restrictions. Alfaro failed to support this claim in his petition with specific facts that demonstrate good cause. *See Ripppo v. State*, 134 Nev. 411, 417, 423 P.3d 1084, 1093 (2018). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fourth, Alfaro argued it would result in a fundamental miscarriage of justice if his claims were not heard on the merits because counsel was ineffective. Alfaro failed to demonstrate a fundamental miscarriage of justice, which requires a colorable showing of actual innocence. *See Bousley v. United States*, 523 U.S. 614, 623 (1998). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.<sup>3</sup>

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<sup>2</sup>On appeal, Alfaro argues that he had good cause because counsel misinformed him regarding the remittitur date and it was prison officials who sent his petition to the wrong court. These claims were not raised below, and we decline to consider them for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).


<sup>3</sup>On appeal, he argues that it would be a fundamental miscarriage of justice if his claims were not heard on the merits because he is actually innocent. Alfaro did not argue that he was actually innocent below;

Alfaro also argues on appeal that the district court erred in its findings of facts by including facts not supported by the evidence at trial. The alleged facts complained about by Alfaro were not part of the district court's order. Therefore, we conclude Alfaro failed to demonstrate the district court erred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Carli Lynn Kierny, District Judge  
Lowe Law LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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therefore, we decline to consider this argument on appeal. *See McNelton*, 115 Nev. at 415-16, 990 P.2d at 1275-76.