

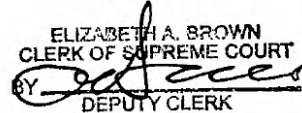
IN THE SUPREME COURT OF THE STATE OF NEVADA

JANET RUTH HILLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84933

FILED

OCT 12 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Janet Ruth Hiller appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Hiller filed the instant postconviction petition, her third, on October 28, 2021, over five years after the remittitur issued on direct appeal. *Hiller v. State*, No. 68897-COA, 2016 WL 4065877 (Nev. Ct. App. July 26, 2016) (Order of Affirmance). Thus, Hiller's petition was untimely filed and successive. *See* NRS 34.726(1); NRS 34.810(1)(b)(2), (3)<sup>1</sup>; *Hiller v. State*, No. 82380, 2021 WL 3701179 (Nev. Aug. 19, 2021) (Order Dismissing Appeal); *Hiller v. State*, No. 74833-COA, 2018 WL 5801508 (Nev. Ct. App. Oct. 25, 2018) (Order of Affirmance). Hiller's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b), (4). Good cause "may be demonstrated by a showing that the factual or legal basis for a claim was not reasonably available" to be raised in a timely petition. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (internal quotation marks omitted). Prejudice requires a showing that errors caused actual and substantial disadvantage to the petitioner. *State v. Huebler*, 128 Nev. 192, 197, 275

<sup>1</sup>The subsections within NRS 34.810 were recently renumbered but not substantively amended. *See* A.B. 49, 82d Leg. (Nev. 2023).

P.3d 91, 95 (2012). Further, because the State specifically pleaded laches, Hiller was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2). A petitioner's claims to overcome the procedural bars must be supported by specific factual allegations that are not belied by the record and, if true, would entitle her to relief. See *Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154-55 (2015).

Hiller argues that she established good cause and prejudice by showing that the State withheld her confidential informant agreement with the Henderson Police Department (HPD) in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and knowingly presented false testimony that she was not a confidential informant in violation of *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (recognizing a constitutional violation for the State to obtain a conviction through the knowing use of false evidence or the failure to correct false evidence). Hiller did not raise this claim in her first postconviction petition and while she acknowledges that she raised this same *Brady* claim in her second postconviction petition, she argues that she only recently obtained a copy of the confidential informant agreement and thus it was "newly discovered evidence" to excuse the procedural bars.

We agree with the district court that Hiller's allegation that her recent acquisition of the agreement does not provide good cause to excuse the procedurally barred *Brady* and *Napue* claims. Generally, showing that the State withheld evidence in violation of *Brady* parallels the good cause showing required to overcome procedural bars, *Mazzan v. Warden*, 116 Nev. 48, 67, 993 P.2d 25, 37, and establishing that the evidence was material under *Brady* and *Napue* can demonstrate prejudice necessary to overcome the procedural bars, *id.*; see *Giglio v. United States*, 405 U.S. 150, 154 (1972) (applying *Brady* materiality test to a *Napue* claim). Although the agreement was not obtained until over five years after Hiller's trial, the

record indicates that Hiller was aware of having signed the document and mentioned working with the HPD as early as her first contact with the Las Vegas Metropolitan Police Department (LVMPD). Thus, she could have raised a claim based on her status as an informant in her first postconviction petition and supported it with specific allegations describing the circumstances under which she signed the agreement and text messages she possessed indicating a relationship with HPD Detective Queen. See *Huebler*, 128 Nev. at 198 n.3, 275 P.3d at 96 n.3 (recognizing that a *Brady* claim must be raised within a reasonable time after the evidence was disclosed or discovered by the defense). Despite including a *Brady* claim based on the agreement in her second postconviction petition, she did not request the agreement from the City of Henderson until after her petition had been denied. See *Lisle v. State*, 131 Nev. 356, 359-60, 351 P.3d 725, 728-29 (2015) (concluding *Brady* claim was untimely and could not constitute good cause where defendant did not demonstrate that it was raised within a reasonable time after discovery of the withheld evidence); *Rippo v. State*, 113 Nev. 1239, 1257, 946 P.2d 1017, 1028 (1997) (“[A] *Brady* violation does not result if the defendant, exercising reasonable diligence, could have obtained the information.”). Even though the instant petition was filed within a reasonable time after Hiller obtained the agreement pursuant to a public records request, Hiller did not allege any impediment external to the defense that prevented her from alleging claims related to the existence of the agreement in her first petition or requesting the document earlier to support the claim in her second postconviction petition. See *Lisle*, 131 Nev. at 360, 351 P.3d at 729 (requiring petitioner’s allegations of good cause to contain specific facts regarding the timing of the discovery of new evidence relative to filing the procedurally barred claim); see also *Hathaway*, 119 Nev. at 252-53, 71 P.3d at 506 (holding that procedurally

barred claims cannot constitute good cause). As Hiller did not allege sufficient facts to demonstrate good cause to excuse the procedural default, NRS 34.726(1); NRS 34.810(1)(b)(2), (3), or that the claim “is based upon grounds of which [Hiller] could not have had knowledge by the exercise of reasonable diligence,” NRS 34.800(1)(a), the district court did not err in denying this claim as procedurally barred and barred by laches without conducting an evidentiary hearing.

Hiller also contends that the failure to consider her petition would result in a fundamental miscarriage of justice because the confidential informant agreement proves that she was working for a detective as a confidential informant and thus was actually innocent of the forgery-related charges. Hiller asserts that this evidence of her actual innocence excuses the procedural bars for her claim that trial counsel was ineffective for failing to properly investigate her defense that she had been acting as a confidential informant. We disagree.

To demonstrate a fundamental miscarriage of justice sufficient to overcome the procedural bars, a petitioner must make a colorable showing of actual innocence. *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); *see Bousley v. United States*, 523 U.S. 614, 623 (1998). Actual innocence requires a showing that “it is more likely than not that no reasonable juror would have convicted [the petitioner] in light of the new evidence.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); *see also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. This “standard is demanding and permits review only in the extraordinary case.” *Berry*, 131 Nev. at 969, 363 P.3d at 1156 (quoting *House v. Bell*, 547 U.S. 518, 538 (2006)).



The evidence at trial showed that Hiller was arrested after she was found in a home containing computers, drives, license and credit card scanners, printers, blank check stock, and financial documents and checks belonging to other people. Notably, detectives found a box in Hiller's room containing financial documents belonging to Hiller and third parties. The confidential informant agreement could provide an innocent explanation for Hiller's presence in the home with the fraud lab. However, the agreement's log section did not indicate that Hiller provided any information pursuant to the agreement. Further, Hiller's possession of other people's financial documents was not expressly permitted in the confidential informant agreement as it prohibited her from engaging in illegal conduct or searching papers or physical effects. Thus, Hiller did not allege sufficient facts to demonstrate that "it is more likely than not that no reasonable juror" would have convicted her in light of this evidence. *Calderon*, 523 U.S. at 559 (quoting *Schlup*, 513 U.S. at 327). Therefore, the district court did not err in rejecting the gateway actual-innocence claim without conducting an evidentiary hearing.

Having considered Hiller's arguments and concluded that the district court did not err, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, C.J.  
Stiglich

Cadish, J.  
Cadish

Lee, J.  
Lee

cc: Hon. Carli Lynn Kierny, District Judge  
Federal Public Defender/Las Vegas  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk