

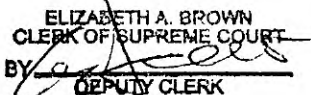
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS MATTHEW SUPRANOVICH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87382-COA

FILED

JUL 26 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Thomas Matthew Supranovich appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on May 19, 2023. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Supranovich filed his petition more than four years after issuance of the remittitur on direct appeal on August 20, 2018. *See Supranovich v. State*, No. 69355, 2018 WL 3629445 (Nev. July 26, 2018) (Order of Affirmance). Thus, Supranovich's petition was untimely filed. *See* NRS 34.726(1). Moreover, Supranovich's petition was successive because he previously raised his claims in a prior postconviction petition for a writ of habeas corpus that was decided on the merits.¹ *See* NRS 34.810(3).² Supranovich's petition was procedurally barred absent a demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS 34.810(4), or that

¹*See Supranovich v. State*, No. 80085-COA, 2020 WL 6582962 (Nev. Ct. App. Nov. 9, 2020) (Order of Affirmance).

²The subsections within NRS 34.810 were recently renumbered. We note the substance of the subsections cited herein was not altered. *See* A.B. 49, 82d Leg. (Nev. 2023).

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).

In his petition, Supranovich argued trial counsel was ineffective for failing to present an independent pathologist, Dr. Todd Grey, to dispute the testimony of a medical examiner regarding the victim's cause of death. Supranovich claimed Dr. Grey's report, which indicated the victim likely died from an arrhythmia, contradicted the medical examiner's conclusion that the cause of death could not be determined. Supranovich also argued he was actually innocent in light of Dr. Grey's conclusions.

Although Supranovich conceded that his petition was untimely and that he had previously raised his claims in a prior petition, Supranovich contended he had good cause to overcome the procedural bars because (1) he was acting pro se when he litigated his first postconviction habeas petition, (2) trial counsel had failed to disclose Dr. Grey's report, and (3) he obtained a copy of Dr. Grey's report after his first petition was denied.

To establish good cause, "a petitioner must show that an impediment external to the defense prevented him or her 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). A petitioner's good cause claims must be supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to have their claims decided on the merits. *Berry*, 131 Nev. at 967, 363 P.3d at 1155.

To the extent Supranovich relies on his prior status as a pro se litigant to establish good cause, a lack of legal knowledge does not constitute good cause to overcome the procedural bars because it is not an impediment external to the defense. *See Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding a petitioner's claim of organic brain damage, borderline mental disability, and reliance on assistance of an inmate law clerk unschooled in the law did not constitute good cause for the filing of a procedurally barred postconviction petition), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003).

Moreover, Supranovich's failure to produce the report in his initial postconviction proceedings did not affect the disposition of his prior claims. Regarding Supranovich's free-standing claim of actual innocence, this court declined to consider the claim because (1) the Nevada Supreme Court has never held that such a claim may be raised in a postconviction habeas petition, and (2) the Legislature had created a separate remedy allowing a defendant to assert their factual innocence based on newly discovered evidence. *Supranovich v. State*, No. 80085-COA, 2020 WL 6582962, at *4 (Nev. Ct. App. Nov. 9, 2020) (Order of Affirmance).

Regarding Supranovich's claim of ineffective assistance of counsel, this court determined that, "*even assuming this report exists*, Supranovich has not explained how it would have changed the outcome of the trial," particularly in light of the medical examiner's testimony that "the victim had an enlarged heart with thickening of the lower chambers, this condition could cause an abnormal beating of the heart called dysrhythmia or arrhythmia, and arrhythmia could cause death." *Id.* at *2 & n.1 (emphasis added). Thus, Supranovich simply failed to plead his prior claim

with sufficient specificity.³ See *Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating “a petitioner must specifically articulate how counsel’s deficient performance prejudiced him or her”). Because the absence of Dr. Grey’s report did not affect the disposition of his prior claims, the recent acquisition of Dr. Grey’s report does not establish good cause for presenting his claims again.

To the extent Supranovich contended that the report enabled him to plead his prior claim with more specificity, he failed to demonstrate he could not have done so absent Dr. Grey’s report. In his prior petition, Supranovich alleged counsel was ineffective for failing to introduce “an independent pathologist’s report disputing [the] coroner’s finding of ‘undetermined’ cause of death and indicating arrhythmia (heart attack) as [the] likely cause of death.” *Supranovich*, No. 80085-COA, 2020 WL 6582962, at *2. Thus, Supranovich was clearly aware of Dr. Grey’s general conclusions. Moreover, the Public Defender’s Office provided Supranovich with his case file approximately four months prior to the filing of his first petition.⁴ In the instant petition, Supranovich discussed at length the medical examiner’s findings, the victim’s pre-existing health conditions, and the State’s theory of prosecution and the circumstantial evidence it relied

³Supranovich contends this court erred in denying his prior claim. This argument is not properly raised in this appeal, and we decline to consider it. See NRAP 40 (providing the procedures for filing a petition for rehearing of a decision by this court).

⁴As indicated in a “certificate of mailing” filed with the district court on March 26, 2019, in Supranovich’s criminal case, this included, *inter alia*, the preliminary hearing transcript, the jury trial transcript, investigation reports, autopsy reports, hospice and medical records regarding the victim, and voluntary statements from various witnesses.

upon to prove its case: all of which Supranovich could have, but failed, to discuss in his prior petition.

Supranovich also failed to allege specific facts indicating an impediment external to the defense, or counsel's purported ineffectiveness, prevented him from obtaining the report in a timely manner. In his pleadings below, Supranovich acknowledged that Dr. Grey's report was available to counsel during trial, and he did not contend that he was unaware of the report. Although Supranovich did not state in his petition how he ultimately obtained Dr. Grey's report, postconviction counsel informed the district court at a hearing that he obtained the report from Dr. Grey directly. Supranovich did not allege why he could not have obtained the report from Dr. Grey earlier, let alone that an impediment external to the defense had prevented him from doing so. Therefore, we conclude the district court did not err by denying Supranovich's good-cause claims.⁵


Supranovich also claimed a fundamental miscarriage of justice would result if his claims were not heard on the merits. 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 also 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 . . . 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

⁵Having so concluded, we need not consider Supranovich's claim on appeal that the district court misapplied the law of the case doctrine.


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)).

Supranovich contended he is actually innocent in light of Dr. Grey’s determination that the victim likely died from natural causes. However, Supranovich did not allege that Dr. Grey had independently examined the victim, and Dr. Grey’s report indicates the opinion was based on certain materials submitted for his review, such as an autopsy report and a transcript of the medical examiner’s preliminary hearing testimony. Dr. Grey’s report and any attendant testimony would have, at most, presented the jury with conflicting opinions regarding the victim’s cause of death. *See McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (“[I]t is the jury’s function, not that of the [reviewing] court, to assess the weight of the evidence and determine the credibility of witnesses.”); *Clark v. State*, 95 Nev. 24, 28, 588 P.2d 1027, 1029 (1979) (recognizing that expert testimony “is not binding on the trier of fact, and the jury [is] entitled to believe or disbelieve the expert witnesses”). Although such evidence may have been useful in establishing reasonable doubt, it does not amount to a colorable showing of actual innocence. *See Mitchell v. State*, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006) (“Actual innocence means factual innocence, not mere legal insufficiency.” (internal quotation marks omitted)). Therefore, we conclude the district court did not err in denying Supranovich’s gateway claim of actual innocence.

For the foregoing reasons, we conclude the district court did not err by denying Supranovich's petition as procedurally barred,⁶ and we ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jacqueline M. Bluth, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁶Having so concluded, we reject Supranovich's claim on appeal that the district court erred by declining to hold an evidentiary hearing on the merits of his underlying claims.