


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT WILLIAM ELLIOTT, JR.  
A/K/A ROBERT WILLIAM ELLIOTT,  
Appellants,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 87310-COA

**FILED**  
AUG 08 2024  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Robert William Elliott, Jr. appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on February 14, 2022.<sup>1</sup> Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Elliott filed his petition more than 15 years after issuance of the remittitur on direct appeal on June 27, 2006. *Elliott v. State*, Docket No. 46282 (Order of Affirmance, May 31, 2006). Thus, Elliott's petition was untimely filed. *See* NRS 34.726(1). Moreover, Elliott'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

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<sup>1</sup>We note the district court also granted the State's motion to dismiss the petition.

his previous petition.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(3).<sup>3</sup> Elliott's petition was procedurally barred absent a demonstration of good cause and actual prejudice, see NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(4), or a showing that he was actually innocent such that a fundamental miscarriage of justice would result 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, Elliott argued that new caselaw provided good cause to overcome the procedural bars. He claimed a recent U.S. District Court order found that he had requested to represent himself and that his request had been denied. Elliott argued the order demonstrated review of his claims on the merits was warranted. He also alleged that the failure to consider his claims regarding the request to self-represent would result in a fundamental miscarriage of justice.

"In order to demonstrate 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). While new caselaw can be good cause to overcome the procedural bars, see *id.* (stating "[a]n impediment external to the defense may be demonstrated by a showing that the . . . legal basis for a claim was not reasonably available" (internal quotation marks omitted)), Elliott's claims regarding his request to self-represent were factually and legally available to be raised previously. The U.S. District


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<sup>2</sup>See *Elliott v. State*, No. 51166, 2009 WL 1470505 (Nev. Mar. 5, 2009) (Order of Affirmance).

<sup>3</sup>The 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).

Court order did not provide good cause for raising these claims for the first time in the instant petition. Additionally, Elliott did not demonstrate that the failure to consider his self-representation claims would result in a fundamental miscarriage of justice. *See Berry*, 131 Nev. at 966, 363 P.3d at 1154 (concluding a petitioner satisfies the fundamental-miscarriage-of-justice standard by “mak[ing] a colorable showing he is actually innocent of the crime”). Accordingly, 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.

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

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

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

cc: Hon. Barry L. Breslow, District Judge  
Robert William Elliott, Jr.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk