


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SERGIO PRADO,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 87908-COA

FILED

SEP 12 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Sergio Prado appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on August 24, 2023. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

Prado filed his petition more than 11 years after issuance of the remittitur on direct appeal on February 7, 2012. *See Prado v. State*, No. 56750, 2012 WL 114148 (Nev. Jan. 12, 2012) (Order of Affirmance). Thus, Prado's petition was untimely filed. *See* NRS 34.726(1). Moreover, Prado'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 his previous petition.¹ *See* NRS 34.810(1)(b)(2); NRS

¹Prado did not appeal from the denial of his previous petition.

34.810(3).² Prado'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 occur were his claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).

Prado argues that the district court erred by denying his petition as procedurally barred because he demonstrated he was actually innocent of the habitual criminal enhancement.³ In his petition, he claimed that the judgments of conviction for his prior convictions could not be used for enhancement purposes because he did not appeal those convictions to the highest court in the State. He also claimed the amendments to the habitual criminal statutes rendered him actually innocent of the habitual criminal enhancement.

Prado 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 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

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).

³Prado does not argue on appeal that he had good cause to overcome the procedural bars.

P.3d 1084, 1097 n.12 (2018); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude that the district court did not err in denying Prado's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Danielle K. Pieper, District Judge
Sergio Prado
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk