

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRELL TORRY TAYLOR,
Appellant,
vs.
CALVIN JOHNSON, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 86823-COA

FILED

NOV 05 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Terrell Torry Taylor appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on March 22, 2023. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Taylor argues the district court erred by denying his petition as procedurally barred. Taylor filed his petition more than two years after issuance of the remittitur on direct appeal on June 16, 2020. *See Taylor v. State*, No. 75447, 2019 WL 6876758 (Nev. Dec. 16, 2019) (Order Affirming in Part, Reversing in Part, and Remanding). Thus, Taylor's petition was untimely filed. *See* NRS 34.726(1). Moreover, Taylor'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 34.810(3).² Taylor'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).

Taylor claimed he could demonstrate good cause to overcome the procedural bars based on new evidence from two jurors demonstrating that the foreperson lied to or materially misled the trial court regarding an altercation that occurred during jury deliberations. Taylor alleged the factual basis for his two substantive claims was not reasonably available to him during his direct appeal or prior postconviction proceedings. Taylor's substantive claims alleged that (1) the foreperson's answers demonstrated improper bias such that Taylor was denied his right to an impartial jury and (2) trial counsel were ineffective in responding to the jury deliberation issue during trial.

To demonstrate good cause to overcome the procedural bars, a petitioner must offer a legal excuse by showing "that an impediment external to the defense prevented him . . . from complying with the state procedural default rules." *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). That is, a petitioner must show "that the factual or legal basis for a claim was not reasonably available . . . or that some interference by officials, made compliance impracticable." *Id.* (quotation marks omitted). A petitioner is entitled to an evidentiary hearing on his good cause

¹See *Taylor v. Warden*, No. 82772-COA, 2021 WL 4167407 (Nev. Ct. App. Sept. 13, 2021) (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).

claim if it is “supported by specific facts not belied by the record, which if true, would entitle him to relief.” *Id.* at 254-55, 71 P.3d at 507-08.

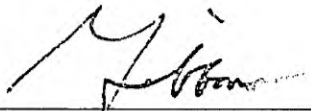
Both of Taylor’s claims rely on his allegation that the foreperson’s lies or misrepresentations to the trial court demonstrate constitutionally improper juror bias. In most situations, voir dire serves as the mechanism to identify and safeguard against juror bias. *See Patton v. Yount*, 467 U.S. 1025, 1038 (1984). However, where the events giving rise to an allegation of juror bias occur after voir dire, the court may hold a post-trial hearing on the subject. *See Smith v. Phillips*, 455 U.S. 209, 217-18 (1982) (providing that, because “[t]he safeguards of juror impartiality, such as *voir dire* and protective instructions from the trial judge, are not infallible,” a trial court may hold a post-trial hearing); *Remmer v. United States*, 347 U.S. 227, 229-30 (1954) (considering the integrity of the jury proceedings where comments were made to a juror about profiting from a verdict and where the Federal Bureau of Investigation investigated that juror during trial and remanding for a post-trial hearing where “[t]he trial court . . . should determine the circumstances, the impact thereof upon the juror, and whether or not it was prejudicial, in a hearing with all interested parties permitted to participate”).

Here, the events giving rise to Taylor’s allegation of juror bias occurred after voir dire. Although the trial court held a hearing regarding the altercation that occurred during deliberations, it alerted the parties prior to the hearing that its “procedure and process [was] not to talk to any other juror except the foreperson.” Thereafter, only the foreperson provided information about the altercation. Given the trial court’s order, the hearing did not permit participation from all the interested parties, namely the other jurors involved in or impacted by the altercation, but only permitted

an explanation from the foreperson. Thus, the factual basis underlying Taylor's substantive claims—that the jury foreperson lied to or materially misled the trial court regarding the altercation—was not then reasonably available to Taylor, and it is unclear from the record when the factual basis became reasonably available to Taylor.

Akin to the circumstances in *Hasan v. Galaza*, 254 F.3d 1150, 1154 (9th Cir. 2001), in which an untimely petition alleging ineffective assistance of trial counsel was remanded for an evidentiary hearing to determine when the petitioner could have discovered the additional facts about a potential jury tampering issue that provided a basis upon which to allege prejudice, we conclude an evidentiary hearing should be held in this matter to address the facts that Taylor alleges were previously unavailable. At the hearing, the district court should determine whether Taylor has shown good cause—that the factual basis for his claim was not reasonably available to be raised in a timely postconviction habeas petition or that some interference by officials made compliance impracticable—and actual prejudice to overcome the procedural bars such that his claims should be considered on the merits. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

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