

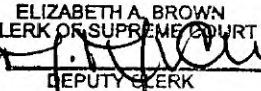
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICKEY LEE GORMAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 87948-COA

**FILED**

NOV 26 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Rickey Lee Gorman appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 22, 2023. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Gorman first appears to argue that the district court erred by denying his petition as procedurally barred without first conducting an evidentiary hearing.<sup>1</sup> In his petition, Gorman argued that he had been unlawfully arrested, vindictively prosecuted, and wrongfully convicted and imprisoned. The district court concluded these claims could have been raised on direct appeal and thus were procedurally barred. *See* NRS 34.810(1)(b).

On appeal, Gorman argues the district court erred because he can overcome the procedural bar by demonstrating good cause and prejudice, a fundamental miscarriage of justice, and a gateway claim of

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<sup>1</sup>The district court addressed Gorman's ineffective-assistance-of-counsel claims on the merits. To the extent Gorman contends the district court erred in relation to these claims, he fails to cogently argue how the district court erred. Therefore, we need not consider these contentions for relief. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

actual innocence. Gorman failed to raise these arguments to overcome the procedural bar in his petition. *See Chappell v. State*, 137 Nev. 780, 787, 501 P.3d 935, 949 (2021). To the extent Gorman argued a gateway claim of actual innocence at a hearing held on his petition, the district court did not exercise its discretion to allow him to assert a claim he had not previously pleaded. *Cf. Barnhart v. State*, 122 Nev. 301, 303-04, 130 P.3d 650, 651-52 (2006) (noting that “the only issues that should be considered by the district court at an evidentiary hearing on a post-conviction habeas petition are those which have been pleaded in the petition or a supplement petition” but commenting that “the district court may exercise its discretion under certain circumstances to permit a petitioner to assert claims not previously pleaded”). We conclude the district court did not abuse its discretion in declining to hear arguments that were not raised in the petition, and we decline to consider these arguments for the first time on appeal. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989). Therefore, we conclude the district court did not err by denying these claims as procedurally barred.


Gorman also appears to argue that he is actually innocent and that appellate counsel was ineffective for failing to investigate or present an actual innocence claim. Gorman did not raise these claims in his petition, but he made arguments related to these claims at the hearing held on his petition. The district court did not allow Gorman to raise these new claims at the hearing, and its refusal to do so was not an abuse of discretion. *Cf. Barnhart*, 122 Nev. at 303-04, 130 P.3d at 651-52. We decline to consider these new claims for the first time on appeal. *See Wade*, 105 Nev. at 209 n.3, 772 P.2d at 1293 n.3.

Finally, Gorman appears to argue the district court erred by not filing his motion to present exhibits in support of his petition. Gorman's motion included argument in response to the State's responsive pleading and new argument not raised in Gorman's petition. Gorman was not allowed to file additional pleadings because the State did not move to dismiss his petition. See NRS 34.750(4), (5). Therefore, we conclude Gorman has not shown that the district court erred in this regard. In addition, while Gorman's motion also included exhibits, Gorman represented to the district court at a hearing held on his petition that all of his proposed exhibits were already part of the record. Therefore, we conclude Gorman has not shown that he is entitled to relief based on this claim. See NRS 178.598 (stating that any error that does not affect a defendant's substantial rights shall be disregarded). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

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<sup>2</sup>Having considered Gorman's arguments and the record on appeal, we deny Gorman's motion to supplement the record on appeal. Insofar as Gorman has raised other issues which are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Michelle Leavitt, District Judge.  
Rickey Lee Gorman  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk