

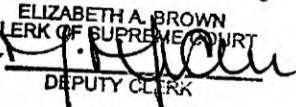
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDUARDO CAMACHO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88677-COA

**FILED**

NOV 26 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Eduardo Camacho appeals from a district court order denying a motion for relief under NRCP 60(b) or, alternatively, a postconviction petition for a writ of habeas corpus filed on January 9, 2024.<sup>1</sup> Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

In his pleading, Camacho claimed his conviction and sentence for felony murder should be set aside or vacated for various reasons. Specifically, Camacho contended that (1) the State did not prove mens rea or malice; (2) the trial court improperly imposed a deadly weapon enhancement; (3) the State did not prove he was a major participant in the underlying felony or he had touched the deceased victim; (4) the evidence showed another person killed the victim, and he did not murder the victim or assist in any murder; (5) his criminal and juvenile records do not reflect

---

<sup>1</sup>Camacho's pleading was titled "newly discovered evidence, actual-innocence & motion: for a rule (60(b)-(6) review and re-consideration-re-view of plain error, structural error & request for evidentiary hearing." The district court construed Camacho's pleading as either an NRCP 60(b) motion or, alternatively, as a postconviction habeas petition and properly decided Camacho's request for relief as a postconviction petition. We note Camacho does not contend that his pleading was a petition to establish factual innocence filed pursuant to NRS 34.900-.990.

any “instances of actions that expresses a desire to violently hurt or murder anyone or anything”; and (6) his sentence was unconstitutional because he was just months past his eighteenth birthday and “[he] didn’t even commit a homicide offense.”

Camacho’s claims challenged the validity of his conviction and sentence and therefore his claims had to be raised in a postconviction petition for a writ of habeas corpus. See NRS 34.724(2)(b) (stating a postconviction habeas petition “[c]omprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the judgment of conviction or sentence, and must be used exclusively in place of them”). Therefore, the district court properly considered Camacho’s motion as a postconviction petition and did not err in denying Camacho relief under NRCP 60(b), a civil remedy available post-judgement.

As for Camacho’s postconviction habeas petition, the petition was procedurally barred. Camacho filed his petition more than 15 years after issuance of the remittitur on direct appeal on August 8, 2008. See *Camacho v. State*, No. 49150, 2008 WL 6099077 (Nev. July 14, 2008) (Order Affirming in Part, Vacating in Part, and Remanding). Thus, Camacho’s petition was untimely filed. See NRS 34.726(1). Moreover, Camacho previously filed several postconviction petitions for a writ of habeas corpus.<sup>2</sup> Camacho’s petition was successive to the extent it alleged grounds for relief that had previously been decided on the merits, and it constituted an abuse

---

<sup>2</sup>See *Camacho v. State*, No. 81029, 2020 WL 6743122 (Nev. Nov. 13, 2020) (Order of Affirmance); *Camacho v. McDaniel*, No. 63354, 2014 WL 4668495 (Nev. Sept. 17, 2014) (Order of Affirmance); *Camacho v. Warden*, No. 55401, 2011 WL 1344170 (Nev. Apr. 6, 2011) (Order of Affirmance).

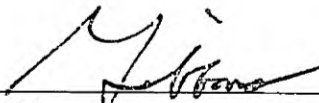
of the writ to the extent it raised new and different grounds for relief. *See* NRS 34.810(1)(b)(2); NRS 34.810(3). Therefore, Camacho’s petition was procedurally barred absent a demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(4), or a showing that 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).

Camacho did not contend that he had good cause to excuse the procedural bars. Rather, Camacho argued a miscarriage of justice would result if his claims were not heard on the merits because he is actually innocent of his murder conviction. To demonstrate a fundamental miscarriage of justice sufficient to overcome the procedural bars, “a petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence.” *Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 875 (2014). “This means that the petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of . . . new evidence.” *Berry*, 131 Nev. at 966, 363 P.3d at 1154 (internal quotation marks omitted); *see also Schlup v. Delo*, 513 U.S. 298, 316 (1995) (“Without any new evidence of innocence, even the existence of a concededly meritorious constitutional violation is not in itself sufficient to establish a miscarriage of justice that would allow a habeas court to reach the merits of a barred claim.”).

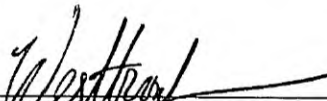
Although Camacho’s pleading refers to “newly discovered evidence,” Camacho failed to identify any such evidence in his petition. Rather, Camacho disputed the sufficiency of the evidence presented at trial. Therefore, he failed to demonstrate a fundamental miscarriage of justice sufficient to overcome the procedural bars, and we conclude the district

court did not err by denying Camacho's petition as procedurally barred. See *State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

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

cc: Hon. Lynne K. Jones, Chief Judge  
Eduardo Camacho  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

---

<sup>3</sup>Insofar as Camacho 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.