


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VALERIE MOORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88458-COA

**FILED**

DEC 24 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Valerie Moore appeals from a district court order denying a motion to appoint counsel and dismissing a “Motion/Petition for Alternative Writ of Mandamus Pursuant to NRS 34.720-24, 34.185, 34.380 34.160-170-180” filed on January 8, 2024. Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

In her pleading, Moore referenced statutory provisions and caselaw applicable to petitions for a writ of mandamus and postconviction petitions for a writ of habeas corpus. Moore claimed, among other things, that she was actually innocent of the charges and that counsel provided ineffective assistance. Moore requested that her guilty plea be vacated and that she be released from prison pending trial as well as compensatory and punitive damages. The district court determined that Moore’s pleading had aspects of both a petition for a writ of mandamus and a petition for a writ of habeas corpus.<sup>1</sup> The district court further determined that the pleading

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<sup>1</sup>Moore does not challenge the district court’s construal of her pleading on appeal.

failed as a mandamus petition and was procedurally barred as a postconviction habeas petition.

To the extent Moore sought mandamus relief, Moore failed to demonstrate such relief was warranted. A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion, *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of mandamus will not issue, however, if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. Moore's claims challenged the validity of her judgment of conviction or sentence and, thus, she had a plain, speedy, and adequate remedy in the ordinary course of law by raising these claims in a postconviction habeas petition. *See* NRS 34.724(2)(b). Moreover, Moore failed to identify any specific act the performance of which was mandated by law or any arbitrary or capricious exercise of discretion. Therefore, we conclude the district court did not err by declining to grant Moore mandamus relief.

To the extent Moore sought postconviction habeas relief, the petition was procedurally barred. Moore filed her petition more than 15 years after issuance of the remittitur on direct appeal on February 26, 2008. *See Moore v. State*, Docket No. 49270 (Order of Affirmance, January 30, 2008). Thus, Moore's petition was untimely filed. *See* NRS 34.726(1). Moore's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice—*see id.*, or a showing that she was actually innocent such that a fundamental miscarriage of justice would result were her claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).

Moore did not allege in her petition that she had good cause to excuse the procedural time bar; rather, Moore contended that she was actually innocent of the charges. Specifically, Moore claimed that a man, who had abused her, falsely informed authorities that she had started the fire; that there was no evidence, or there was at least reasonable doubt, she started the fire; and that she only pleaded guilty to avoid the death penalty.

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 [her] 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.”).


Moore did not identify any new evidence of her innocence in her pleading, and Moore’s claims appeared to challenge the sufficiency of the evidence presented at the preliminary hearing. Therefore, she failed to demonstrate a fundamental miscarriage of justice sufficient to overcome the procedural time bar, and we conclude the district court did not err by declining to grant Moore habeas relief.<sup>2</sup> *See State v. Eighth Jud. Dist. Ct.*

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<sup>2</sup>The district court erred by failing to consider Moore’s gateway claim of actual innocence. We nevertheless affirm the district court’s order for the reasons stated herein.

(*Riker*), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to postconviction habeas petitions is mandatory.”). Accordingly,<sup>3</sup> we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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

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<sup>3</sup>Having concluded that the district court did not err by dismissing Moore’s petition as procedurally barred, we further conclude that the district court did not err by denying Moore’s motion to appoint counsel. See NRS 34.750(1).