

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY POSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88922-COA

FILED

JAN 31 2025

ELIZABETH A. BROV...
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Posey appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 5, 2024. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Posey argues the district court should not have denied his petition as procedurally barred without conducting an evidentiary hearing. Posey filed his petition more than two years after entry of the judgment of conviction on September 20, 2021.¹ Thus, Posey's petition was untimely filed. *See* NRS 34.726(1). Moreover, Posey'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 because he raised claims new and different from those raised in his prior petitions.² *See* NRS 34.810(1)(b)(2); NRS 34.810(3). Posey's petition

¹Posey did not file a direct appeal from his judgment of conviction.

²*Posey v. State*, No. 85903-COA, 2023 WL 4247498 (Nev. Ct. App. June 28, 2023) (Order of Affirmance). Posey did not appeal the denial of his second postconviction habeas petition, and the appeal from his third habeas petition was dismissed. *Posey v. State*, No. 88489, 2024 WL 2043695 (Nev. May 7, 2024) (Order Dismissing Appeal).


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). To warrant an evidentiary hearing, a petitioner's good-cause claims must be supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to have their claims decided on the merits. *See Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154-55 (2015).


Posey cited a purported finding in *Posey v. State*, No. 87119-COA, 2024 WL 2237902 (Nev. Ct. App. May 16, 2024) (Order Affirming in Part and Dismissing in Part), as good cause to excuse the procedural bars. In the decision, this court stated that “[e]ven assuming the evidence presented demonstrated Posey did not know that K.H. was a minor, it does not implicate Posey’s factual innocence because it does not indicate that Posey did not engage in the conduct alleged in the information.” *Id.* at *1 (emphasis added). Posey insisted that the decision recognized that he did not know that one of the victims was a minor and therefore constituted new evidence to support his claims of ineffective assistance of counsel and actual innocence. Contrary to Posey’s argument, this court did not concede that Posey demonstrated that he believed K.H. was an adult. The decision only assumed that the evidence was credible for the purpose of evaluating its impact under NRS 34.960. Thus, Posey failed to demonstrate that this court’s previous order constituted good cause. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (holding that, “[i]n order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state

procedural default rules[,]” which may be shown if “the factual or legal basis for a claim was not reasonably available . . . or that some interference by officials, made compliance impracticable” (internal quotation marks omitted)).

Posey also contends in his informal brief that his petition was supported by declarations that established a gateway actual innocence claim. *See Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 875 (2014) (providing that a colorable showing of factual innocence may demonstrate a fundamental miscarriage of justice sufficient to overcome the procedural bars). Posey did not support his fourth postconviction petition for a writ of habeas corpus with any declarations, nor did Posey attempt to overcome the procedural bars by asserting that the failure to consider the petition on the merits would result in a fundamental miscarriage of justice. Accordingly, we need not address this argument. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989). Because the district court correctly denied the petition as procedurally barred without conducting an evidentiary hearing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Susan Johnson, District Judge
Anthony Posey
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk