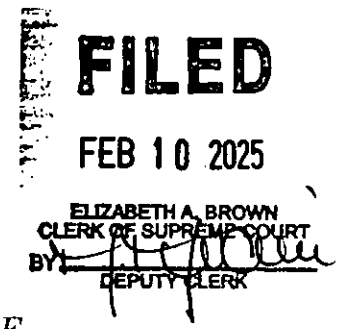
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERON DEALONTA FRANKLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88835-COA



ORDER OF AFFIRMANCE

Teron Dealonta Franklin appeals from a district court order denying a motion to appoint counsel and dismissing a "Petition for Writ of Habeas Corpus, as Petitioner is Actually Innocent," filed on March 22, 2024. Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

Franklin filed his petition more than 10 years after issuance of the remittitur on direct appeal on January 14, 2014. *See Franklin v. State*, No. 60618, 2013 WL 5314897 (Nev. Sept. 18, 2013) (Order of Affirmance). Thus, Franklin's petition was untimely filed. *See* NRS 34.726(1). Moreover, Franklin'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. *See Franklin v. State*, No. 72579-COA, 2018 WL 1064580 (Nev. Ct. App. Feb. 14, 2018) (Order of Affirmance); *see also* NRS 34.810(1)(b)(2); NRS 34.810(3). Franklin'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 "the failure to consider the

petition on its merits would amount to a fundamental miscarriage of justice," *Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).

In his petition, Franklin did not allege he had good cause to excuse the procedural bars.[1] Rather, he contended he was actually innocent of the charge.[2] 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

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[1]In his reply in the district court, Franklin argued he presented new caselaw to support his first and second claims. He also provided argument for why he did not allege his fifth claim sooner. Franklin was required to raise his good-cause claims on the face of his petition. *See Chappell v. State*, 137 Nev. 780, 787, 501 P.3d 935, 949 (2021). Further, the law Franklin cited in support of these claims was more than one year old at the time Franklin filed the instant petition. He therefore has not shown he raised these claims within a reasonable time after they purportedly became available and accordingly has not shown good cause to overcome the procedural bars with regard to these claims. *See Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018) (concluding a claim is raised within a reasonable time when the petition is filed within one year after the factual or legal basis for the claim becomes available).

[2]On appeal, Franklin argues the district court erred by denying his petition as successive because it was an actual innocence petition. To the extent Franklin contends his petition was a petition to establish factual innocence pursuant to NRS 34.900-.990, the petition did not reference the applicable statutes, the petition was titled a petition for a writ of habeas corpus, and Franklin's request for counsel relied on a postconviction habeas statute, NRS 34.750. We therefore conclude the district court did not err by construing Franklin's petition as a postconviction petition for a writ of habeas corpus.

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.").

All the new evidence Franklin identified related to the victim's credibility. First, Franklin said his previous attorney obtained a story from the victim that contradicted the State's case against Franklin. Next, Franklin claimed to have several coded letters from the victim saying she framed Franklin.[3] Franklin next contended the State failed to disclose critical information to the jury—dismissal of or favorable plea deals in pending felony cases against the victim—which led to his being convicted based on false and "purchased" testimony. Lastly, Franklin argued that medical reports exist which tend to show the victim lied about her injuries.

Franklin failed to demonstrate actual innocence, or that it was more likely than not that no reasonable juror would have convicted him in light of the identified evidence, where inconsistencies in the victim's account of the incident were introduced to the jury, *see Franklin*, No. 60618, 2013 WL 5314897, at *3, where the victim's mother corroborated the victim's story that nothing was wrong with the victim's arm before the incident and that Franklin threw a bicycle on the victim, *id.* at *1-3, and where photographs were introduced to the jury showing the victim's arm after surgery, *id.* at *2. Franklin therefore failed to demonstrate a fundamental miscarriage of justice sufficient to overcome the procedural bars.

[3]Franklin did not provide the letters with his petition.

Accordingly, the district court did not err by dismissing Franklin's petition as procedurally barred.[4] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Lynne K. Jones, District Judge
Teron Dealonta Franklin
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

[4]Having concluded the district court did not err by dismissing Franklin's petition as procedurally barred, we further conclude the district court did not err by denying Franklin's motion to appoint counsel. *See* NRS 34.750(1).