

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS RUIZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 89227-COA

**FILED**

APR 09 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Carlos Ruiz appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on April 24, 2024. Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

Ruiz filed his petition more than 15 years after issuance of the remittitur on direct appeal on August 8, 2008. *See Ruiz v. State*, Docket No. 48828 (Order Affirming in Part, Vacating in Part, and Remanding, July 14, 2008). Thus, Ruiz's petition was untimely filed. *See* NRS 34.726(1). Moreover, Ruiz'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 petitions.<sup>1</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(3). Ruiz'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

---

<sup>1</sup>*Ruiz v. State*, Docket No. 61296 (Order of Affirmance, April 9, 2013); *Ruiz v. Warden*, No. 57090, 2011 WL 4342614 (Nev. Sept. 14, 2011) (Order of Affirmance).

actually innocent such that “the failure to consider the petition on its merits would amount to a fundamental miscarriage of justice,” *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).


Ruiz argues the district court erred by denying his petition as procedurally barred because he demonstrated he was actually innocent based on the supreme court’s decision in *State v. White*, 130 Nev. 533, 330 P.3d 482 (2014) (holding “one cannot burglarize his own home so long as he has an absolute right to enter the home”). Specifically, he alleged he could not have been convicted of burglary because one of the codefendants resided in the home that Ruiz’s codefendants burgled. Because Ruiz was alleged to have committed burglary as an aider, abettor, or coconspirator, he claimed he could not have been convicted of burglary based on the one codefendant’s absolute right to enter the residence. Consequently, Ruiz claimed he could not have been convicted of felony murder predicated on that burglary

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 House v. Bell*, 547 U.S. 518, 537 (2006) (“[A] gateway claim requires new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.”); *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.”).

Ruiz did not present any new evidence that he is actually innocent. Rather, his argument of actual innocence relied on his legal claim that there was insufficient evidence of burglary presented at trial. Therefore, we conclude that the district court did not err by denying Ruiz’s petition as procedurally barred.<sup>2</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

---

<sup>2</sup>To the extent Ruiz’s petition suggested a freestanding claim of actual innocence, neither this court nor the Nevada Supreme Court has determined “whether and, if so, when a free-standing actual innocence claim exists” within the scope of a postconviction habeas petition. *See Berry*, 131 Nev. at 967 n.3, 363 P.3d at 1154 n.3. The Legislature filled this gap in Nevada law by creating a new postconviction remedy—a petition to establish factual innocence. *See Sanchez v. State*, 140 Nev., Adv. Op. 78, 561 P.3d 35, 38 (2024). Thus, any freestanding claim of factual innocence by Ruiz should be raised and considered in a petition to establish factual innocence. *See NRS 34.900-.990*. We express no opinion on whether Ruiz could meet the requirements of NRS 34.900-.990.

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