

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER BRIAN KINDER,
Appellant,
vs.
ROBERT LEGRAND, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 89074-COA

FILED

AUG 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

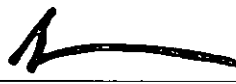
ORDER OF AFFIRMANCE

Christopher Brian Kinder appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on August 29, 2019. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Kinder filed his petition more than five years after issuance of the remittitur on direct appeal on May 20, 2014. *See Kinder v. State*, No. 62401, 2014 WL 1679560 (Nev. Apr. 25, 2014) (Order of Affirmance). Thus, Kinder's petition was untimely filed. *See* NRS 34.726(1). Kinder's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice, *see* NRS 34.726(1), or a showing he is 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 order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence. *Bousley v. United States*, 523 U.S. 614, 623 (1998); *Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 875 (2014).

recognized that a change in the interpretation of an offense may predicate an actual innocence argument, *Bousley* still required the habeas petitioner to make a factual showing of actual innocence under the new interpretation. *Id.* Here, Kinder only alleges that, like in *Castaneda*, the images were found at the same time and in the same room. He does not allege sufficient facts to demonstrate that the State could not show "individual distinct crimes of possession" related to the images found across Kinder's devices. *Castaneda*, 132 Nev. at 444, 373 P.3d at 115 ("This case does not require us to decide whether distinct downloads at different times and in different locations would establish separate units of prosecution as some courts have held."). We therefore conclude the district court did not err by denying Kinder's petition as procedurally barred and barred by laches.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

¹The district court erred by denying the petition on the merits because Kinder had not demonstrated circumstances excusing or avoiding the procedural bars. Nevertheless, the district court also properly denied the requested relief because the petition failed to plead sufficient facts to overcome the procedural bars. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

cc: Hon. Kimberly A. Wanker, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk