IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN ODELL LANGFORD,
Appellant,
vs.
WARDEN RENEE BAKER; AND THE STATE OF NEVADA,
Respondents.

No. 89032-COA

FILED

SEP - 3 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Justin Odell Langford appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on September 19, 2023. Eighth Judicial District Court, Clark County; Jessica K. Peterson, Judge.

Langford filed his petition more than six years after issuance of the remittitur on direct appeal on July 24, 2017. *See Langford v. State*, No. 70536, 2017 WL 2815087 (Nev. June 27, 2017) (Order of Affirmance). Thus, Langford's petition was untimely filed. *See* NRS 34.726(1). Moreover, Langford'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 prior petitions but which he could have raised in those petitions.[1] *See* NRS 34.810(1)(b)(2); NRS 34.810(3).

[1]*See Langford v. Baker*, No. 87149-COA, 2024 WL 486833 (Nev. Ct. App. Feb. 7, 2024) (Order of Affirmance); *Langford v. Baker*, No. 84284-COA, 2022 WL 2841841 (Nev. Ct. App. July 20, 2022) (Order of Affirmance); *Langford v. Baker*, No. 83032-COA, 2021 WL 5370074 (Nev. Ct. App. Nov. 17, 2021) (Order of Affirmance); *Langford v. Baker*, No. 78144-COA, 2019

Langford'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 he is 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). Further, because the State specifically pleaded laches, Langford was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

In his current petition, Langford raises four claims of ineffective assistance of counsel: (1) counsel should have sought the assistance of a psychological expert, Dr. William O'Donohue, to highlight errors in how school and law enforcement professionals interviewed the victim and how errors and bias in those interviews affected the victim's testimony; (2) counsel should have consulted Dr. Keith Inman, an expert in DNA analysis, to explain what the State's DNA findings meant and how the State may have erred in processing DNA or interpreting the results; (3) counsel should have cross-examined the victim's mother, Shayleen C., about a pending family court case wherein the State was seeking to remove the victim and her sister from Shayleen's home; and (4) counsel should have objected to or sought a mistrial based on an instruction given when the jury indicated it could not reach a verdict on three counts. Langford asserts that the evidence supporting the first three claims amounts to new evidence of his actual innocence such that the failure to consider the merits of his claims would result in a fundamental miscarriage of justice.

WL 3812825 (Nev. Ct. App. Aug. 13, 2019) (Order of Affirmance); *Langford v. State*, Nos. 75825, 76075, 2019 WL 1440980 (Nev. Mar. 29, 2019) (Order of Affirmance).

In relation to the alleged new evidence, making "a colorable showing of actual innocence" with new evidence establishes a fundamental miscarriage of justice sufficient to overcome the procedural bars. *Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 875 (2014). To make this demonstration "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 (quotation marks omitted). Such evidence may include evidence that "significantly undermines or impeaches the credibility of witnesses presented at trial, if all the evidence, including new evidence, makes it 'more likely than not that no reasonable juror would have found [the] petitioner guilty beyond a reasonable doubt.'" *Gandarela v. Johnson*, 286 F.3d 1080, 1086 (9th Cir. 2002) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). This "standard is demanding and permits review only in the extraordinary case." *Berry*, 131 Nev. at 969, 363 P.3d at 1156 (quoting *House v. Bell*, 547 U.S. 518, 538 (2006)).

Langford did not plead sufficient facts to demonstrate that this was indeed an "extraordinary case." *Id.* Langford insists two new expert reports and a family court case impeach the victim's testimony, the State's DNA expert's testimony, and the victim's mother's testimony such that no reasonable juror would have convicted him. Dr. O'Donohue's report primarily identified inconsistencies between the victim's testimony and her prior testimony and statements. It also identified potential sources of bias in her forensic interviews and possible motives to fabricate the allegations. This report was largely cumulative of the cross-examination performed during trial which highlighted inconsistencies in the victim's testimony and addressed her possible motives to fabricate allegations, *see Langford v.*

State, Nos. 75825, 76075, 2019 WL 1440980, at *2 (Nev. Mar. 29, 2019) (Order of Affirmance) (observing during litigation of first postconviction petition that Langford conceded his counsel "sought to 'poke holes' in [the victim's] testimony in an attempt to discredit her"), and testimony elicited from the victim's friends illustrating potentially conflicting statements by the victim.

Similarly, Dr. Inman's report identifies potential avenues to impeach the State's expert witness, and again, many of these avenues were explored during trial. Trial counsel cross-examined the DNA expert about whether the DNA of the victim's mother and sister were also tested against the recovered DNA and whether related individuals shared sufficient DNA to confuse the results. The State's expert also acknowledged on direct examination that hair follicles typically do not provide mixture results, but because the follicles tested were removed from the towel which was also coated in biological material that could not be completely rinsed from the hair before the DNA was extracted a mixed profile was a possible result. Although the new report indicated there had been some movement by the scientific community away from "identity assumed" language when the random match statistics reached certain thresholds, the report did not challenge the State's expert's statistical calculations upon which the expert assumed the victim's identity.

Lastly, although the potential removal of Shayleen's children could arguably have influenced her testimony, it does not appear to be a significant factor in the context of Shayleen's statements and testimony or in the trial as a whole. Shayleen reacted with disbelief when a detective told her about the victim's accusation, but the text of that interview shows Shayleen came to accept the accusations upon learning specific details from

them as opposed to doing so under threat of the children's removal. Shayleen also testified about family history, their employment history, and the layout of the home. Although she acknowledged that Langford called the victim names and had hit her, Shayleen had not witnessed any of the conduct alleged by the State. Thus, impeaching Shayleen's testimony would have a negligible effect given the remaining evidence of Langford's guilt, namely, the victim's testimony about the abuse and the victim's DNA recovered from a towel on which Langford's sperm and seminal fluid were discovered. Therefore, there was substantial evidence linking Langford to the criminal conduct charged independent of any additional testimony from Shayleen. *See Berry*, 131 Nev. at 969, 363 P.3d at 1156 ("[I]f there was strong evidence at trial linking the defendant to the crime, such as DNA or video evidence, a reasonable jury may convict the defendant . . . because the strength of the other evidence may still lead a reasonable jury to convict the defendant beyond a reasonable doubt.").

For the foregoing reasons, Langford failed to allege sufficient new evidence to significantly impeach the evidence supporting the verdict such that no reasonable juror would have found him guilty. The alleged new evidence presented in the above reports was substantially similar to other evidence admitted at trial. Thus, as opposed to impeaching the trial evidence, the expert testimony on both these topics amounted to simply another factor to assess the victim's credibility. When viewed in the context of the trial as a whole, evidence impeaching Shayleen's testimony with the pending family law case, her testimony would not have much bearing on the jury's verdict because of the substantial evidence of Langford's guilt. Accordingly, we conclude Langford failed to demonstrate it was more likely

than not that no reasonable juror would have convicted him in light of new evidence.

Finally, Langford claimed he had good cause because he could not have raised his claims earlier and because he was not appointed postconviction counsel for his first petition. However, Langford's underlying claims were reasonably available to have been raised in a timely petition, and he thus failed to demonstrate good cause. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Moreover, Langford was not entitled to the assistance of postconviction counsel in a noncapital case, *see Brown*, 130 Nev. at 569, 331 P.3d at 870, and thus, the lack of appointed postconviction counsel did not constitute good cause to overcome the procedural bars. In addition, Langford failed to overcome the presumption of prejudice to the State. *See* NRS 34.800(2). Thus, the district court did not err in denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

[2]Although the district court erred in not addressing Langford's fundamental miscarriage of justice claim, we nevertheless affirm for the reasons stated herein. *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. Jessica K. Peterson, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk