

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TORRENCE LEWIS.

Appellant,

vs.

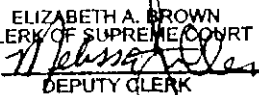
BRIAN WILLIAMS, WARDEN OF HIGH
DESERT STATE PRISON; WARDEN OF
ESP; AND THE STATE OF NEVADA,

Respondents.

No. 88465-COA

FILED

SEP 16 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Torrence Lewis appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on September 26, 2023. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Lewis filed his petition more than five years after issuance of the remittitur on direct appeal on May 22, 2018. *See Lewis v. State*, No. 72589, 2018 WL 2041526 (Nev. Apr. 27, 2018) (Order of Affirmance). Thus, Lewis's petition was untimely filed. *See* NRS 34.726(1). Moreover, Lewis'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.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(3). Lewis'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 is actually innocent such that "the

¹*Lewis v. State*, No. 79914-COA, 2020 WL 6019644 (Nev. Ct. App. Oct. 9, 2020) (Order of Affirmance).

25-40467

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). 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 relief. *Id.* at 967, 363 P.3d at 1154-55.

Lewis argues the district court erred by denying his good-cause claim that the State withheld evidence in violation of *Brady*² without first conducting an evidentiary hearing. A valid *Brady* claim can constitute good cause and prejudice to excuse the procedural bars. *See State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003). Generally, showing that the State withheld exculpatory evidence in violation of *Brady* parallels the good cause showing required to overcome procedural bars, and establishing that the evidence was material under *Brady* can demonstrate prejudice. *Mazzan v. Warden*, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000). To demonstrate prejudice for a *Brady* violation in a case where petitioner does not allege or demonstrate he specifically requested the evidence, the petitioner must show a reasonable probability of a different outcome at trial. *Bennett*, 119 Nev. at 600, 81 P.3d at 8.

Lewis argued the State withheld three pieces of evidence from him: (1) Angelica Mendolia’s statement to the police given the night of the crime and her subsequent contacts with the district attorney’s office; (2) police body-worn camera footage taken just after the crimes were committed; and (3) the criminal history of one of the victims, Eric Bradford,

²*Brady v. Maryland*, 373 U.S. 83 (1963).

including his prior trespass from the 7-Eleven where Lewis's crimes were committed.

As to Mendiola's statement,³ while Lewis may have sufficiently alleged facts indicating a statement was withheld,⁴ he failed to allege how Mendiola's statement may have differed from her trial testimony or how the withheld statement was exculpatory, save for a bare allegation that the statement could have been used to impeach her trial testimony. Further, the two victims also identified Lewis as the attacker; thus, even had the State turned over the statement and it included information that could have impeached Mendiola, Lewis failed to demonstrate a reasonable probability of a different outcome had the State provided the statement. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

As to the body-worn camera footage, Lewis's argument in his petition was that the footage showed the police asking Bradford to identify a man but Bradford did not identify him as the assailant. Further, Lewis argued a still photo from the videos was used for identification purposes at trial. In his reply to the State's response to the petition, Lewis argued the body-worn camera footage showed other Black males who looked similar to Lewis at the 7-Eleven and, had counsel had this footage, counsel could have argued that it was one of those men who committed the crime. This is also

³At trial, Mendiola, who worked at the 7-Eleven, identified Lewis as the attacker because she recognized his voice.

⁴Mendiola provided a declaration attached to Lewis's petition that stated: "My name is Angelica Mendiola. I only remember that the day the incident happened with Claudia I gave an official statement regarding what had happened. Later on I was called to an attorney's office and I also gave a statement of what I knew but the statement was recorded."

his argument on appeal. The district court did not appear to consider this claim and because the argument was raised for the first time in the reply, the State was not given an opportunity to respond to the argument. For these reasons, we decline to consider the claim in the first instance on appeal. *See Chappell v. State*, 137 Nev. 780, 787, 501 P.3d 935, 949 (2021) (providing “a petitioner’s explanation of good cause and prejudice for each procedurally barred claim must be made on the face of the petition”); *see also Barnhart v. State*, 122 Nev. 301, 303, 130 P.3d 650, 651-52 (2006) (stating the district court should only consider issues pleaded in the petition and supplemental petition to which the State has had an opportunity to respond).

As to Bradford’s criminal history, Lewis changes his argument on appeal. In his petition, Lewis claimed the State failed to disclose Bradford’s criminal history, which included two gross misdemeanors and his trespass from the 7-Eleven. Lewis argued these prior convictions could have been used to undermine Bradford’s credibility because he had been violent in the past and the convictions and trespass “cast doubt on this truthfulness as a witness.” The petition did not further explain how the prior convictions or the trespass could have cast doubt on Bradford’s truthfulness. On appeal, Lewis argues the prior trespass from the 7-Eleven shows Bradford could have had motivation to lie and identify someone else as the perpetrator. Because the argument on appeal was not raised below, we decline to consider it in the first instance.⁵ *State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

⁵Lewis does not provide any specific argument on appeal regarding Bradford’s gross misdemeanor convictions. Thus, we decline to address this claim on appeal. *Maresca v. State*, 103 Nev. 669, 773, 748 P.2d 3, 6 (1987)

Next, Lewis argues the district court erred by denying his claim that he demonstrated a fundamental miscarriage of justice to overcome the procedural bars. “A fundamental miscarriage of justice requires a colorable showing that the petitioner is actually innocent of the crime.” *Lisle v. State*, 131 Nev. 356, 361, 351 P.3d 725, 730 (2015) (internal quotation marks omitted). Actual innocence means factual innocence, not legal innocence. *Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 875 (2014). To demonstrate actual innocence, a petitioner must show that “it is more likely than not that no reasonable juror would have convicted [the petitioner] in light of . . . new evidence.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Ripppo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018).

Lewis argues he demonstrated he was actually innocent because his medical records were new evidence that would have bolstered his testimony that he was unable to wield a knife or strike someone. The district court found “the Court extensively reviewed the thousands of pages of exhibits and it was noted that after his second surgery which was on July 23rd 2016 [seven days before the instant crime,] the nurse noted that the Defendant was able to move all of his fingers and had full sensations in his left hand because he was left hand dominant.” This finding is supported by the record. Further, Lewis does not point to anything specific in the medical

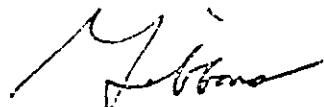
(“It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.”).

records that demonstrate he was entirely unable to use his hand.⁶ Thus, Lewis fails to demonstrate no reasonable juror would have convicted him in light of new evidence. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Having concluded that the district court did not err by denying the petition as procedurally barred, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Nadia Krall, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁶Lewis argues that a doctor's note from prior to the surgery on July 23, 2016, states that the doctor was going to place Lewis in a fiberglass cast. However, the notes after the surgery state Lewis's hand was bandaged with a surgical wrap and does not mention the hand being cast.