

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT GEOFFREY DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90304-COA

FILED

DEC 16 2025

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

ORDER OF AFFIRMANCE

Robert Geoffrey Davis appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on April 19, 2024. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Davis filed his petition nearly seven years after issuance of the remittitur on direct appeal on May 22, 2017. *See Davis v. State*, No. 69414, 2017 WL 1532719 (Nev. Apr. 26, 2017) (Order of Affirmance). Thus, Davis's petition was untimely filed. *See* NRS 34.726(1). Moreover, Davis's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits.¹ *See* NRS

¹*Davis v. State*, No. 84325-COA, 2023 WL 2149686 (Nev. Ct. App. Feb. 21, 2023) (Order of Affirmance).

34.810(1)(b)(2); NRS 34.810(3). Davis'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," *Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). Further, because the State specifically pleaded laches, Davis was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2). To overcome that presumption, Davis had to show that (1) "the petition is based upon grounds of which [he] could not have had knowledge by the exercise of reasonable diligence," NRS 34.800(1)(a), and (2) the failure to consider his claims would result in a fundamental miscarriage of justice, NRS 34.800(1)(b).

The district court denied Davis's petition as barred by laches. Specifically, the district court found Davis failed to provide any argument to overcome the rebuttable presumption of prejudice to the State despite filing an opposition to the State's motion to dismiss. This finding is supported by the record.

On appeal, Davis argues the State failed to allege how it was prejudiced in responding to the petition or in retrying Davis. *See* NRS 34.800(1). However, because more than five years had passed since a decision had been entered on Davis's direct appeal, the burden was on Davis to rebut the presumption that the State was prejudiced. *See* NRS 34.800(2);


see also Thomas v. State, 138 Nev. 359, 382, 510 P.3d 754, 775 (2022). Therefore, he fails to demonstrate he was entitled to relief pursuant to this claim.

Alternatively, Davis argues he rebutted the presumption of prejudice in his petition because his good cause and prejudice arguments demonstrated he exercised reasonable diligence.² Even crediting this argument, Davis fails to overcome the presumption of prejudice to the State in retrying Davis. *See* NRS 34.810(1)(b). Davis failed to allege a miscarriage of justice in his petition, opposition to the motion to dismiss, or in his opening brief. While Davis argues in his reply brief that it would be a miscarriage of justice if his petition was barred by laches, this claim is raised for the first time in his reply brief, and we decline to consider it. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”); *LaChance v. State*, 130 Nev. 263, 277 n.7, 321 P.3d 919, 929 n.7 (2014) (holding the NRCP does not allow litigants to raise a new issue for the first time in a reply brief); *see also* NRAP 28(c) (reply briefs are “limited to answering any new matter set forth in the opposing brief”). Therefore, we

²Davis’s good cause and prejudice arguments below were that he could not properly raise his claim regarding the procurement of mental health records previously because his trial and appellate counsel had a conflict of interest and because he was denied an evidentiary hearing on this claim in his previous postconviction habeas proceedings.

conclude the district court did not err by denying Davis's petition as barred by laches. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Scott N. Freeman, District Judge
Attorney General/Carson City
Federal Public Defender/Las Vegas
Washoe County District Attorney
Washoe District Court Clerk

³Davis argues in his reply that the State implicitly concedes he addressed laches in his petition. We conclude this claim is not supported by the record or the State's answering brief.