

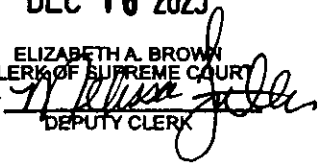
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KELLY DEAN MICKELSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90323-COA

FILED

DEC 16 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kelly Dean Mickelson appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on April 14, 2017. Second Judicial District Court, Washoe County; Tammy Riggs, Judge.

Mickelson filed his petition over 21 years after issuance of the remittitur on direct appeal on January 26, 1996. *See Mickelson v. State*, Docket No. 26249 (Order Dismissing Appeal, November 30, 1995). Mickelson's petition was therefore untimely filed. *See* NRS 34.726(1). Mickelson's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice, *see id.*—or a showing that he is actually innocent such that a fundamental miscarriage of justice would result were his claims not decided on the merits, *see Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).

Mickelson claimed the United States Supreme Court's decisions in *Welch v. United States*, 578 U.S. 120 (2016), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016), provided good cause to excuse the procedural bars to his claim that he is entitled to the retroactive application of *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000). This court has

previously rejected a good-cause argument similar to Mickelson's, *see Branham v. Warden*, 134 Nev. 814, 817, 434 P.3d 313, 316 (Ct. App. 2018), and he is therefore not entitled to relief based upon this good-cause claim.

Mickelson also claimed he could demonstrate a fundamental miscarriage of justice to overcome the procedural bars. Specifically, Mickelson claimed that he is actually innocent of first-degree murder because the evidence against him was only sufficient to support a conviction for second-degree murder. This is not actual innocence, and Mickelson thus failed to overcome the procedural bars. *See Bousley v. United States*, 523 U.S. 614, 623 (1998) ("'[A]ctual innocence' means factual innocence, not mere legal insufficiency."). The district court thus did not err by dismissing Mickelson's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Tammy Riggs, District Judge
Kelly Dean Mickelson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk