

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID ANDREW COIL,
Appellant,
vs.
CALVIN JOHNSON, WARDEN AND
THE STATE OF NEVADA,
Respondents.

No. 90252-COA

FILED

JAN - 8 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY all Jones
DEPUTY CLERK

ORDER OF AFFIRMANCE

David Andrew Coil appeals from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer L. Schwartz, Judge.¹

Coil filed his petition on December 18, 2024, more than five years after issuance of the remittitur on direct appeal on November 12, 2019. *Coil v. State*, No. 74949-COA, 2019 WL 5258445 (Nev. Ct. App. Oct. 16, 2019) (Order of Affirmance). Thus, Coil's petition was untimely filed. See NRS 34.726(1). Coil's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice—see *id.*, 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

¹The Honorable Deborah L. Westbrook did not participate in the decision in this matter.

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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).

In his petition, Coil asserted his claims should be considered on the merits because he is actually innocent.² The law-of-the-case doctrine precludes further litigation of his actual innocence claim, see *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975), because the same claim was considered and rejected on appeal from the denial of Coil's first postconviction habeas petition, see *Coil v. State*, No. 84107-COA, 2022 WL 2840711 (Nev. Ct. App. July 20, 2022) (Order of Affirmance). The law of the case "cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." *Hall*, 91 Nev. at 316, 535 P.2d at 799. Because Coil failed to demonstrate that the law of the case should not be applied, see *Tien Fu Hsu v. Cnty. of Clark*, 123 Nev. 625, 630-31, 173 P.3d 724, 728-29 (2007) (discussing when the doctrine of the law of the case should not be applied), we conclude the district court did not err by denying the petition as procedurally barred.³

²To the extent Coil's petition suggested a freestanding claim of actual innocence, neither this court nor the Nevada Supreme Court has determined "whether and, if so, when a free-standing actual innocence claim exists" within the scope of a postconviction habeas petition. *Berry*, 131 Nev. at 967 n.3, 363 P.3d at 1154 n.3. The legislature filled this gap in Nevada law by creating a new postconviction remedy—a petition to establish factual innocence. See *Sanchez v. State*, 140 Nev., Adv. Op. 78, 561 P.3d 35, 38 (2024). Thus, any freestanding claim of factual innocence by Coil should be raised and considered in a petition to establish factual innocence. See NRS 34.900-.990. We express no opinion on whether Coil can meet the requirements for a petition to establish factual innocence.

³For the first time on appeal, Coil claims he has good cause to overcome the time bar because (1) his appellate counsel was dilatory in transmitting his case file; and (2) the statutory deadline for timely filing a

Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Bulla


_____, J.
Gibbons

cc: Hon. Jennifer L. Schwartz, District Judge
David Andrew Coil
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

postconviction petition for a writ of habeas corpus occurred during the COVID-19 pandemic. Because Coil did not raise these claims below, we decline to consider them for the first time on appeal. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989); *see also 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”).

⁴Pending resolution of this appeal, Coil filed a document titled “Status Writ to Remand,” requesting the court inform him as to the status of his appeal and urging the court to remand his matter for further proceedings. In light of this order, Coil’s motion is denied as moot.