

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM JOSEPH MCCAFFREY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90800-COA

FILED

APR 22 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

William Joseph McCaffrey appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on December 6, 2024. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

McCaffery claims the district court erred by dismissing his petition as procedurally barred without first conducting an evidentiary hearing. McCaffrey filed his petition more than fourteen years after issuance of the remittitur on direct appeal on August 10, 2010. *McCaffrey v. State*, No. 54873, 2010 WL 3503752 (Nev. July 15, 2010) (Order of Affirmance). Thus, McCaffrey's petition was untimely filed. *See* NRS 34.726(1). Moreover, McCaffrey's postconviction petition constituted an abuse of the writ as he raised claims new and different from those he raised in his first postconviction petition for a writ of habeas corpus. *See* NRS 34.810(3). McCaffrey's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS 34.810(3); NRS 34.810(4), or a showing that 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). To demonstrate actual innocence, a petitioner must show that “it is more likely than not that no reasonable juror would have convicted him beyond a reasonable doubt given . . . new evidence.” *Id.* at 968, 363 P.3d at 1155. Thus, a petitioner must make a colorable showing of “factual innocence, not mere legal insufficiency.” *Bousley v. United States*, 523 U.S. 614, 623 (1998). Further, actual innocence in a case involving a guilty plea requires that the petitioner demonstrate that he is actually innocent of any charges forgone by the State in the course of plea bargaining. *Id.* at 624. Application of the procedural bars is mandatory. *State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Additionally, the State specifically pleaded laches in its motion to dismiss McCaffrey’s petition. Where, as here, more than five years have elapsed since the decision on direct appeal, a petitioner must overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2). To overcome that presumption, McCaffrey was required to demonstrate both that his “petition is based upon grounds of which [he] could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the State occurred,” NRS 34.800(1)(a), and that “a fundamental miscarriage of justice has occurred in the proceedings resulting in the judgment of conviction,” NRS 34.800(1)(b); *see also Mitchell v. State*, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006) (indicating that a fundamental miscarriage of justice to overcome the procedural bars to an

untimely or successive petition and to satisfy NRS 34.800(1)(b) can both be satisfied with a showing of actual innocence).

First, McCaffrey asserted he had good cause for his delay because the detective who investigated his possession of child sexual abuse materials was convicted—more than a decade after McCaffrey’s conviction—of bigamy, forgery, and offering false evidence for offenses the detective committed during his divorce proceedings. McCaffrey asserted that the detective had not been convicted at the time he filed his first postconviction habeas petition and that the detective’s conviction undermined the reliability of the detective’s investigation of McCaffrey’s criminal conduct. Even assuming McCaffrey demonstrated good cause to raise those claims related to the detective’s conviction,¹ *see State v. Powell*, 122 Nev. 751, 756, 138 P.3d 453, 456 (2006) (recognizing that good cause requires a “show[ing] that an impediment external to the defense prevented a claim from being raised or properly resolved earlier” and that such an impediment can be shown “where the factual . . . basis for a claim was not reasonably available” (internal quotation marks omitted)), he has not demonstrated that the detective’s conviction for felony offenses in a wholly unrelated matter constitutes an error in the proceedings underlying McCaffrey’s conviction that worked to his actual and substantial disadvantage and thus has not demonstrated actual prejudice to overcome the procedural bars. *See Pelligrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). Therefore, we conclude the district

¹We note the detective’s conviction does not demonstrate good cause to raise those claims unrelated to the conviction.

court did not err by rejecting this claim without conducting an evidentiary hearing.

Second, McCaffrey claimed he could overcome the procedural bars because he is actually innocent. McCaffrey acknowledged he similarly claimed in his first postconviction habeas petition that he was actually innocent because allegations of the detective's criminal conduct indicated the detective may have falsified evidence in McCaffrey's criminal matter. In the instant petition, McCaffrey relies on the fact that the detective who investigated his case has now been convicted of crimes, which allegedly undermined the reliability of the investigation into McCaffrey's criminal conduct. In our prior order, we concluded that the fact that the detective was accused of falsifying evidence during the detective's divorce proceedings did not demonstrate McCaffrey's actual innocence, especially given the substantial evidence of McCaffrey's guilt. *McCaffrey v. State*, No. 83388-COA, 2022 WL 2353299, at *2 (Nev. Ct. App. June 29, 2022) (Order of Affirmance).² "The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same." *Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quotation marks omitted).

The only fact that changed between McCaffrey's first petition, in which McCaffrey alleged the detective's charges demonstrated actual innocence, and the instant petition is that the detective has now been convicted of those crimes. The fact that the detective has now been convicted, however, does not constitute substantially new or different

²In his informal brief on appeal, McCaffrey requests that we recall the remittitur for Docket No. 83388-COA. We conclude McCaffrey has not demonstrated a basis on which the remittitur should be recalled and therefore deny his request.

evidence such that the law of the case doctrine would not bar McCaffrey from reasserting this claim. *See Hsu v. Cnty. of Clark*, 123 Nev. 625, 630, 173 P.3d 724, 729 (2007) (holding that a court may revisit a prior ruling when “subsequent proceedings produce substantially new or different evidence”). And McCaffrey does not argue that either of the two other exceptions to the doctrine should apply. *See id.* (outlining two additional exceptions to the law of the case doctrine). Therefore, we conclude McCaffrey has not demonstrated the law of the case doctrine should not be applied to this actual-innocence claim. Accordingly, the district court did not err by rejecting this actual-innocence claim without conducting an evidentiary hearing.

Further, we conclude McCaffrey did not overcome the presumption of prejudice to the State pursuant to NRS 34.800. As outlined above, McCaffrey failed to demonstrate a fundamental miscarriage of justice. *See* NRS 34.800(1)(b). Accordingly, we conclude the district court did not err by denying McCaffrey’s petition without conducting an evidentiary hearing.³


McCaffrey also argues on appeal that the district court abused its discretion in denying his request for the appointment of postconviction

³McCaffrey argues on appeal that the district court should have conducted an evidentiary hearing on the merits of his underlying claims. Because McCaffrey did not demonstrate actual innocence or good cause and actual prejudice to overcome the procedural bars, he failed to demonstrate the district court should have conducted an evidentiary hearing on his procedurally barred claims. *See Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1234 n.53 (2008) (“The court may . . . reject a substantive post-conviction claim without an evidentiary hearing when the claim is procedurally barred and the defendant cannot overcome the procedural bar.”).

counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.* However, the issues in this matter were not difficult, McCaffrey was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. *See* NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Therefore, we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

⁴To the extent McCaffrey raises other arguments not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Barry L. Breslow, District Judge
William Joseph McCaffrey
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk