



IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN MONCADA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90432

JONATHAN MONCADA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90434

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court order denying appellant Jonathan Moncada's postconviction petitions for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Moncada stole a truck in September 2013 and possessed another truck stolen in February 2014. Moncada entered into an agreement resolving numerous charges and pleaded guilty to grand larceny of a motor vehicle and offense involving a stolen vehicle in separate cases. Moncada violated the plea agreement before sentencing, leaving the State free to argue for habitual criminal enhancement. The district court adjudicated Moncada a habitual criminal and imposed consecutive prison terms of 10 to 25 years in each case. The Court of Appeals affirmed the judgments of conviction. *Moncada v. State*, No. 68083-COA, 2015 WL 9594660 (Nev. Ct. App. Dec. 18, 2015) (Order of Affirmance); *Moncada v. State*, No. 68082-COA, 2016 WL 3586759 (Nev. Ct. App. June 22, 2016) (Order of Affirmance).

Moncada filed a timely postconviction habeas petition in each case, which the district court denied. The Court of Appeals affirmed in part but reversed and remanded for an evidentiary hearing on the claim that trial counsel failed to inform Moncada of the range of possible punishments under the habitual criminal statute. *Moncada v. State*, No. 74029-COA, 2018 WL 5881574 (Nev. Ct. App. Nov. 7, 2018) (Order Affirming in Part, Reversing in Part and Remanding); *Moncada v. State*, No. 74243-COA, 2018 WL 5881635 (Nev. Ct. App. Nov. 7, 2018) (Order Affirming in Part, Reversing in Part and Remanding). After a hearing, the district court denied the remaining ineffective-assistance claim, and the Court of Appeals affirmed. *Moncada v. State*, Nos. 80126-COA & 80127-COA, 2021 WL 92708 (Nev. Ct. App. Jan. 8, 2021) (Order of Affirmance). On September 28, 2022, Moncada filed a second postconviction habeas petition in each case, raising numerous claims of ineffective assistance of trial counsel. The district court denied the petitions as procedurally barred. Moncada appeals, and we affirm.

As Moncada concedes, the current postconviction habeas petitions are subject to multiple procedural bars. The petitions were untimely because they were filed more than six years after remittitur issued on Moncada's appeals from the judgments of conviction. *See* NRS 34.726(1). Moncada also previously sought postconviction relief; thus, the petitions were successive to the extent they raised claims that were already litigated and resolved on the merits. *See* NRS 34.810(3). Lastly, the petitions constituted abuses of the writ to the extent they raised new claims that could have been raised earlier. *See id.* Petitions that are untimely, successive, or an abuse of the writ are subject to dismissal absent a showing of good cause and actual prejudice. NRS 34.726(1)(a)-(b); NRS 34.810(4).

To establish good cause, “a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules.” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Such an impediment “may be demonstrated by a showing that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials made compliance impracticable.” *Id.* (citation modified).

Moncada first argues there is good cause to overcome the procedural bars because the State withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Before sentencing, Moncada was arrested for stealing cars from John Glodfelter and then-Deputy Attorney General Timothy Treffinger. After a magistrate found probable cause for the alleged theft of Glodfelter’s car, the district court concluded that Moncada violated the guilty plea agreement, allowing the State to argue for any legal sentence.¹ Moncada now argues the State violated *Brady* by failing to disclose reports by Moncada’s then-girlfriend, Jennifer Marsden, that Moncada had permission to drive Glodfelter’s car. But counsel argued before and during sentencing that Glodfelter had given Moncada permission to drive the car and the district court determined this information was irrelevant. Moncada was not charged with stealing Glodfelter’s car in either of the instant cases. That incident was germane only to the extent it triggered a violation of the plea agreement, which occurred once the magistrate made the probable cause determination. Any subsequent

¹Under the plea agreement, Moncada agreed “that the State will be free to argue for any legal sentence . . . to include any increased punishment as a habitual criminal, if . . . an independent magistrate, by affidavit review, confirms probable cause against [Moncada] for new criminal charges.”

prosecution involving Glodfelter's car had no bearing on the sentences here, and the State was not obligated to disclose discovery from an unrelated case. *See Mazzan v. Warden*, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000) (requiring the State to disclose, under *Brady*, evidence that is favorable to the defense and material to guilt, punishment, or impeachment); *Rippo v. State*, 134 Nev. 411, 431, 423 P.3d 1084, 1103 (2018) ("To establish a *Brady* violation, the defendant must show . . . that prejudice resulted because the evidence was material, i.e., that there is a reasonable possibility of a different result had there been disclosure.").

Moncada further contends that the State's failure to disclose Marsden's reports prevented Moncada from making a timely argument that trial counsel insufficiently investigated the grounds for the presentence motion to recuse the Nye County District Attorney's Office. The recusal motion related to allegations that Treffinger, who was allegedly romantically involved with Marsden while she was also dating Moncada, accessed files belonging to the district attorney's office and attempted to influence the resolution of Moncada's cases. Whether Moncada had permission to drive Glodfelter's car had no nexus to Treffinger's purported interference, much less any of Moncada's other ineffective-assistance claims. Thus, the State's nondisclosure of Marsden's statements did not provide good cause to overcome procedural bars on this basis.

Relatedly, Moncada argues there is good cause to overcome procedural bars based upon newly discovered evidence supporting the claim that trial counsel inadequately investigated the circumstances supporting the motion to recuse. Moncada provides the declaration of a defense investigator, documenting a 2021 interview in which Marsden reported that Treffinger agreed to help Moncada with his charges on the condition

Marsden stop dating Moncada. Marsden stated that Treffinger then talked to the assigned prosecutor and suggested offering a favorable sentencing recommendation to induce Moncada to “turn himself in.” Moncada was clearly aware of his own relationship with Marsden when the motion to recuse was filed. Furthermore, Moncada’s own declaration indicates he knew Marsden was simultaneously involved with Treffinger, and in late December 2014 learned from Marsden that Treffinger was “trying to involve himself in [Moncada’s] case[s]” and advocating for a life sentence. If trial counsel failed to interview Marsden to support the motion to recuse, Moncada could have timely asserted ineffective assistance on this basis in the first habeas petitions. *See Hathaway*, 119 Nev. at 253, 71 P.3d at 506 (explaining that “a claim or allegation that was reasonably available to the petitioner during the statutory time period would not constitute good cause to excuse the delay”). Therefore, Moncada has not demonstrated that Marsden’s statements constituted previously unavailable evidence establishing good cause.

Lastly, Moncada argues that it would be a fundamental miscarriage of justice to apply the procedural bars. To demonstrate a fundamental miscarriage of justice, “a petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence.” *Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 875 (2014). Moncada does not claim actual innocence and thus cannot show that a fundamental miscarriage of justice would result.

Because Moncada has not demonstrated any grounds to overcome the procedural bars, the district court did not err in denying the instant petitions without conducting an evidentiary hearing. *See State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005)

(noting that “[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory”); *Rubio v. State*, 124 Nev. 1032, 1046 n.53, 194 P.3d 1224, 1234 n.53 (2008) (stating that a district court need not conduct an evidentiary hearing concerning procedurally barred claims). Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Bell, J.



Stiglich, J.



Cadish, J.

cc: Hon. Robert W. Lane, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Nye County District Attorney
Fifth Judicial District Court Clerk