

IN THE SUPREME COURT OF THE STATE OF NEVADA

FLORENCIO CARLOS URIBE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59543

**FILED**

SEP 12 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

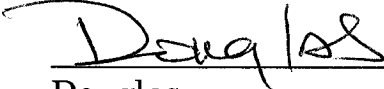
This is an appeal from an order of the district court denying appellant Florencio Carlos Uribe’s post-conviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge.

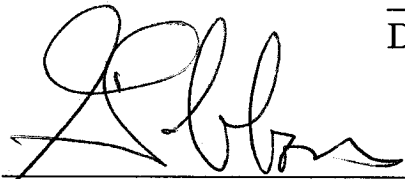
Uribe contends that the district court’s failure to consider the merits of his untimely habeas petition amounts to a fundamental miscarriage of justice. Uribe asserts that NRS 200.508(2) (the child abuse and neglect statute) was unconstitutionally applied in his case because the jury instructions allowed the jury to convict him based on an inadvertent, ignorant, or negligent act. And Uribe argues that, if the jury had been properly instructed, it is “highly unlikely that he would have ever been convicted.”

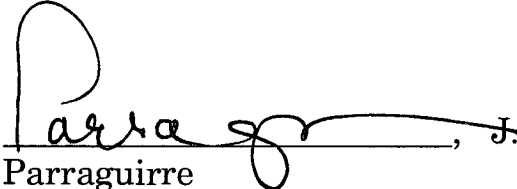
A colorable showing of actual innocence may overcome procedural bars under the fundamental miscarriage of justice standard. Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). However, “actual innocence’ means factual innocence, not mere legal insufficiency.” Bousley v. United States, 523 U.S. 614, 623 (1998). Here, the district court found that Uribe “made no showing that he was actually innocent”

and “only argued that the conviction was legally insufficient.” The record on appeal supports the district court’s factual findings and we conclude that the district court did not err by denying Uribe’s untimely petition. See NRS 34.726(1); State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (explaining that the application of procedural bars is mandatory). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Fourth Judicial District Court Dept. 1, District Judge  
Cavanaugh-Bill Law Offices, LLC  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk

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<sup>1</sup>Because Uribe’s habeas petition was procedurally barred, we decline to reach the merits of the claims raised in the petition.