

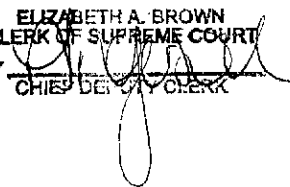
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73468

FILED

JAN 09 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Steven Floyd Voss appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on March 31, 2017.¹ Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Voss filed his petition nearly 17 years after issuance of the remittitur on direct appeal on June 20, 2000. *See Voss v. State*, Docket No. 32830 (Order Vacating in Part and Affirming in Part, May 24, 2000). Thus, Voss' petition was untimely filed. *See* NRS 34.726(1). Moreover, Voss' petition was successive because he had previously filed five postconviction petitions for a writ of habeas corpus.² *See* NRS 34.810(1)(b)(2); NRS

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

²*Voss v. Warden*, Docket No. 69900 (Order Denying Rehearing and Vacating Prior Order and Corrected Order of Affirmance, August 17, 2016); *Voss v. Warden*, Docket No. 66508 (Order of Affirmance, March 18, 2015); *Voss v. State*, Docket No. 62746 (Order of Affirmance, December 17, 2013); *Voss v. State*, Docket No. 54033 (Order of Affirmance, September 29, 2010) (affirming the denial of two separate postconviction petitions for a writ of habeas corpus).

34.810(2). Voss' petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

In an attempt to overcome the procedural bars, Voss argues a recent United States Supreme Court case, *Welch v. United States*, 578 U.S. ___, 136 S. Ct. 1257 (2016), provides good cause for again raising his claim regarding the *Kazalyn*³ jury instruction. Even assuming, without deciding, *Welch* provided good cause, Voss cannot demonstrate actual prejudice to overcome the procedural bar. The Nevada Supreme Court has previously concluded, even had the jury not been given the so-called *Kazalyn* instruction, Voss would have still been convicted of first-degree murder. See *Voss v. State*, Docket No. 62746 (Order of Affirmance, December 17, 2013). Therefore, Voss' claim regarding prejudice is barred by the doctrine of law of the case, which cannot be avoided by a more detailed and focused argument. See *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Accordingly, we conclude the district court did not err by denying this claim.


To the extent Voss argued he was actually innocent based on the *Kazalyn* jury instruction and the evidence provided at trial, Voss failed to demonstrate he was actually innocent. Voss failed to demonstrate "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (emphasis added) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Further, Voss' claim regarding the jury instruction involved legal innocence and not


³*Kazalyn v. State*, 108 Nev. 67, 825 P.2d 578 (1992).


factual innocence. *See Mitchell v. State*, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006).

Having reviewed the record, we conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jerome M. Polaha, District Judge
Steven Floyd Voss
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk