

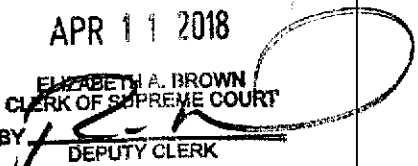
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDERIC GREEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73479

FILED

APR 11 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Frederic Green appeals from an order of the district court denying the postconviction petition he filed on February 27, 2017.<sup>1</sup> Second Judicial District Court, Washoe County; A. William Maupin, Senior Justice.

Green filed his petition more than 13 years after issuance of the remittitur on direct appeal on January 6, 2004. *See Green v. State*, 119 Nev. 542, 80 P.3d 93 (2003). Thus, Green's petition was untimely filed. *See* NRS 34.726(1). Moreover, Green's petition was successive because he had previously filed four postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.<sup>2</sup> *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Green's petition was procedurally barred absent a demonstration

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

<sup>2</sup>*Green v. State*, Docket No. 71209 (Order of Affirmance, June 15, 2017); *Green v. State*, Docket No. 68271 (Order of Affirmance, March 16, 2016); *Green v. State*, Docket No. 59153 (Order of Affirmance, June 13, 2012); *Green v. State*, Docket No. 47318 (Order of Affirmance, June 4, 2007)

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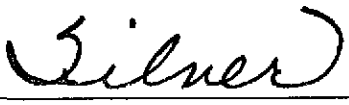
of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

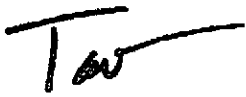
Green claims the district court erred by denying his petition as procedurally barred because the Nevada Supreme Court's decision in *Gonzalez v. State*, 131 Nev. \_\_\_, 366 P.3d 680 (2015), was new law that was not reasonably available to be raised in an earlier proceeding. We conclude the district court did not err by finding Green failed to demonstrate good cause to overcome the procedural bars. This claim was first raised more than one year after *Gonzalez* was decided in 2015, and Green fails to demonstrate good cause for the entire length of his delay. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Further, Green filed a postconviction petition for a writ of habeas corpus on March 8, 2016, and failed to allege why he could not have raised this claim in that previous petition.

We also conclude Green failed to demonstrate prejudice or a fundamental miscarriage of justice because he failed to demonstrate *Gonzalez* would apply to his case. *Gonzalez* addresses when the jury asks a question that suggests confusion or lack of understanding of a significant element of the applicable law and the district court refuses to answer the question. *Gonzalez*, 131 Nev. at \_\_\_, 366 P.3d at 683. Here, the question asked by the jury did not suggest confusion or a lack of understanding of a significant element of the law, and the district court answered the jury's question. Further, Green did not demonstrate actual innocence because he failed to show "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) (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), and

his claim was improperly based on legal innocence and not factual innocence, *see Mitchell v. State*, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006). Accordingly, 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: Chief Judge, Second Judicial District Court  
Hon. A. William Maupin, Senior Justice  
Frederic Green  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk