

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAIMON MONROE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72944

**FILED**

FEB 13 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Daimon Monroe appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on December 16, 2016.<sup>1</sup> Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Monroe's petition was untimely because it was filed more than six years after the remittitur on direct appeal was issued on August 24, 2010,<sup>2</sup> and it was successive because he had previously filed a postconviction petition for a writ of habeas corpus.<sup>3</sup> See NRS 34.726(1); NRS 34.810(2). Consequently, Monroe's petition was procedurally barred absent a demonstration of good cause and actual prejudice or that the failure to consider his claims would result in a fundamental miscarriage of justice.

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

<sup>2</sup>*Monroe v. State*, Docket No. 52788 (Order Affirming in Part, Reversing in Part and Remanding, July 30, 2010).

<sup>3</sup>*Monroe v. State*, Docket No. 65827 (Order of Affirmance, October 16, 2015).

See NRS 34.726(1); NRS 34.810(3); *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

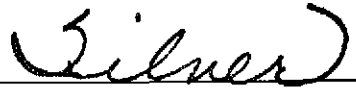
To the extent Monroe claimed he only has an eighth grade education, he was being kept in isolation, he did not have access to the law library, and his lawyers failed to provide him with discovery, we conclude he has not demonstrated good cause. Monroe's limited education does not constitute good cause. See *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Monroe failed to provide specific facts relating to his alleged administrative segregation and lack of access to the law library. See *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). And defense counsels' failure to provide discovery is not an impediment external to the defense. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).


To the extent Monroe claimed he was actually innocent because the police searched his home without a warrant, we conclude he has not established his factual innocence, see *Bousley v. United States*, 523 U.S. 614, 623 (1998) ("actual innocence" means factual innocence, not mere legal insufficiency"), or demonstrated that, "in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him," *id.* (internal quotation marks omitted). Therefore, Monroe has not shown that he has suffered a fundamental miscarriage of justice. See *Pellegrini*, 117 Nev. at 887, 34 P.3d at 537.

Having determined Monroe failed to demonstrate good cause or a fundamental miscarriage of justice sufficient to overcome the procedural bars, we conclude that the district court did not err in summarily denying

his successive and untimely petition. *See State v. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (explaining the application of procedural bars is mandatory). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, C.J.  
Silver

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

cc: Hon. Eric Johnson, District Judge  
Daimon Monroe  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>4</sup>The Honorable Jerome T. Tao did not participate in the decision in this matter.