

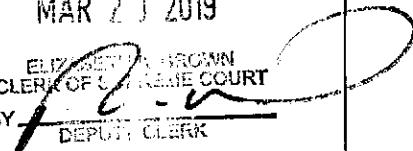
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN EDWARD WATKINS,
Appellant,
vs.
ISIDRO BACA, WARDEN, NEVADA
STATE PRISON,
Respondent.

No. 73309-COA

FILED

MAR 23 2019

ELIZABETH BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jonathan Edward Watkins appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 14, 2017.¹ Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Watkins filed his petition more than 17 years after issuance of the remittitur on direct appeal on September 28, 1999. *See Watkins v. State*, Docket No. 30958 (Order Dismissing Appeal, September 1, 1999). Watkins' petition was therefore untimely filed. *See* NRS 34.726(1). Watkins' petition was also successive and an abuse of the writ.² NRS 34.810(1)(b)(2); NRS

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

²*See Watkins v. State*, Docket No. 68243 (Order of Reversal and Remand, March 17, 2016); *Watkins v. Skolnik*, Docket No. 56979 (Order of

34.810(2). Watkins' petition was therefore 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).

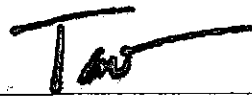
Watkins claimed the decisions in *Welch v. United States*, 578 U.S. ___, 136 S. Ct. 1257 (2016), and *Montgomery v. Louisiana*, 577 U.S. ___, 136 S. Ct. 718 (2016), provided good cause to excuse the procedural bars to his claim that he is entitled to the retroactive application of *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000). We conclude the district court did not err by concluding the cases did not provide good cause to overcome the procedural bars. See *Branham v. Warden*, 134 Nev. ___, ___, 434 P.3d 313, 316 (Ct. App. 2018).

Watkins also claimed he could demonstrate a fundamental miscarriage of justice to overcome the procedural bars. A petitioner may overcome procedural bars by demonstrating he is actually innocent such that the failure to consider his petition would result in a fundamental miscarriage of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. ___, ___ n.12, 423 P.3d 1084, 1097 n.12 (2018). Watkins claimed that “[t]he facts in this case established that [he] only committed a second-degree murder.” This is not actual innocence, and Watkins thus failed to overcome the


Affirmance, November 18, 2011); *Watkins v. State*, Docket No. 40651 (Order of Affirmance, May 5, 2004).

procedural bars. *See Bousley v. United States*, 523 U.S. 614, 623 (1998) (“[A]ctual innocence’ means factual innocence, not mere legal insufficiency.”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

cc: Chief Judge, Second Judicial District
Jonathan Edward Watkins
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

³We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. *See* NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017).