

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

UBALDO URBINA-MALDONADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76736-COA

FILED

JUL 30 2019

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

ORDER OF AFFIRMANCE

Ubaldo Urbina-Maldonado appeals from a district court order granting the State's motion to dismiss his postconviction petitions for a writ of habeas corpus. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Urbina-Maldonado's first postconviction petition for a writ of habeas corpus was untimely because it was filed on December 20, 2012, more than three years after the remittitur on direct appeal was issued on October 6, 2009.¹ See NRS 34.726(1). The district court denied Urbina-Maldonado's petition based on the procedural time bar.² See *id.* The Nevada Supreme Court, however, reversed the district court order and

¹See *Urbina-Maldonado v. State*, Docket No. 51848 (Order of Affirmance, September 10, 2009).

²The Honorable Brent T. Adams, District Judge, ruled on Urbina-Maldonado's first postconviction petition for a writ of habeas corpus.

remanded the case with instructions to appoint postconviction counsel and to conduct further proceedings regarding Urbina-Maldonado's claims of good cause.³

Following the Nevada Supreme Court's remand, Urbina-Maldonado filed a second postconviction habeas petition, his postconviction counsel filed a supplemental petition, and the State filed a motion to dismiss the habeas petitions and the supplemental petition. The district court entered an interlocutory order denying the supplemental petition on its merits and then conducted an evidentiary hearing on Urbina-Maldonado's claims of good cause and granted the State's motion to dismiss the habeas petitions. This appeal follows.

Urbina-Maldonado claims the district court erred by denying his supplemental habeas petition because the State's failure to file an amended indictment and the district court's failure to arraign him on the amended indictment left the district court without jurisdiction to try his case and rendered the judgment of conviction void.⁴ We conclude the district court erred by reaching the merits of the supplemental petition because the petition that it supplemented was procedurally barred and consequently it also was procedurally barred. *See State v. Eighth Judicial*

³*See Urbina-Maldonado v. State*, Docket No. 63330 (Order of Reversal and Remand, December 12, 2013).

⁴Urbina-Maldonado only challenges the denial of his supplemental petition. He does not challenge the district court's rejection of his other claims of good cause and dismissal of the postconviction habeas petitions as procedurally barred.

Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (explaining the application of procedural bars is mandatory). However, we will affirm the judgment of the district court if it reached the right result albeit for the wrong reason. *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

Urbina-Maldonado claims his supplemental petition was not procedurally barred because the district court's lack of jurisdiction constitutes actual innocence.⁵ Although 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), "actual innocence means factual innocence, not mere legal insufficiency," *Bousley v. United States*, 523 U.S. 614, 623 (1998). As Urbina-Maldonado's claim is one of "mere legal insufficiency," he has not made a colorable showing of actual innocence and therefore has not demonstrated a fundamental miscarriage of justice sufficient to excuse the procedural bar to his petition.

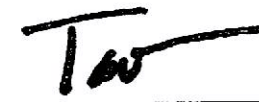
We conclude the district court did not err by granting the State's motion to dismiss Urbina-Maldonado's untimely postconviction habeas

⁵To the extent Urbina-Maldonado claims that structural error provides an independent basis for overcoming procedural bars, he has not cited to any relevant authority to support his claim and therefore we conclude he is not entitled to relief on this basis. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

petitions and that the district court reached the right result by denying Urbina-Maldonado's supplemental petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Lynne K. Simons, District Judge
Edward T. Reed
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk