

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAMIRO VELA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77734-COA

FILED

AUG 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Ramiro Vela appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Third Judicial District Court, Lyon County; Charles M. McGee, Senior Judge.


Vela filed his petition on October 4, 2012, more than 14 years after issuance of the remittitur on direct appeal on April 29, 1998. *Vela v. State*, Docket No. 26810 (Order Dismissing Appeal, April 10, 1998). Thus, Vela's petition was untimely filed. *See* NRS 34.726(1). Moreover, Vela's petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Vela's 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). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts *de novo*. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

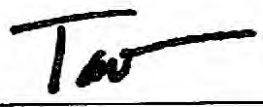
¹Vela filed a petition in the district court on July 1, 1999, but he later voluntarily withdrew the petition.

Vela claimed he would suffer a miscarriage of justice if his claims were not considered on their merits because he was actually innocent. Vela based his actual-innocence claim upon an assertion that the victim had recanted her statement that he had sexually abused her. The district court conducted a hearing concerning this issue and permitted the victim to testify from Arkansas via Skype. The victim denied recanting her statements concerning the sexual abuse and reaffirmed that she had been sexually abused by Vela. The district court found the victim's testimony was credible and denied Vela's actual-innocence claim. Substantial evidence supports the district court's finding.

On appeal, Vela argues the district court violated his rights under the Confrontation Clause of the Sixth Amendment by permitting the victim to testify via Skype. However, the right to confrontation is a trial right, *Sheriff v. Witzenburg*, 122 Nev. 1056, 1060, 145 P.3d 1002, 1004 (2006), and, therefore, not applicable to Vela's postconviction proceedings. Accordingly, we conclude Vela fails to demonstrate he is entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Charles M. McGee, Senior Judge
Mary Lou Wilson
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk