

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN ANTHONY HAAG,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69768

**FILED**

DEC 28 2016

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

*ORDER OF AFFIRMANCE*

Appellant Steven Haag appeals from an order of the district court denying his May 1, 2015, petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Haag filed his petition on May 1, 2015, more than 11 years after entry of the judgment of conviction on November 20, 2003.<sup>1</sup> Thus, Haag's petition was untimely filed. *See* NRS 34.726(1). Moreover, Haag's petition was successive because he had previously filed three 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(2). Haag's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3). To warrant an evidentiary

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<sup>1</sup>No direct appeal was taken.

<sup>2</sup>*Haag v. Warden*, Docket No. 60277 (Order of Affirmance, October 8, 2012); *Haag v. State*, Docket No. 57296 (Order of Affirmance, May 9, 2011); *Haag v. State*, Docket No. 47924 (Order of Affirmance, February 28, 2007).

hearing, a petitioner must raise claims supported by specific allegations not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Haag claims the district court erred by denying his claim he has good cause to overcome the procedural bars because the State failed to provide him with the results of DNA testing. Although a valid *Brady v. Maryland*, 373 U.S. 83 (1963), claim can constitute good cause and prejudice sufficient to excuse the procedural bars, *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003) (“proving that the State withheld the evidence generally establishes cause, and proving that the withheld evidence was material establishes prejudice), it must be raised within a reasonable time after the withheld evidence is disclosed or discovered by the defense, *State v. Huebler*, 128 Nev. 192, 198 n.3, 275 P.3d 91, 95 n.3 (2012). Here, Haag knew about the potential DNA evidence prior to pleading guilty. Therefore, it was unreasonable to wait more than 11 years to file a petition raising this claim. Accordingly, Haag fails to demonstrate good cause to overcome the procedural bars.

Second, Haag claims the district court erred by denying his claim he has good cause to overcome the procedural bars because counsel was ineffective for ensuring Haag received the results of the DNA testing prior to his pleading guilty. This claim does not provide good cause because a claim of ineffective assistance of counsel that is procedurally barred cannot constitute good cause to excuse a procedural defect. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, Haag fails to demonstrate good cause to overcome the procedural bars.

Third, Haag claims the district court erred by denying his petition as procedurally barred because he is actually innocent. To prove

actual innocence as a gateway to reach procedurally-barred constitutional claims of error, a petitioner must 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); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). To be entitled to an evidentiary hearing on a claim of actual innocence, the petitioner must present “specific factual allegations that, if true, and not belied by the record, would show that it is more likely than not that no reasonable juror would have convicted him beyond a reasonable doubt given the *new* evidence.” *Berry v. State*, 131 Nev. \_\_\_, \_\_\_, 363 P.3d 1148, 1155 (2015) (emphasis added).


The DNA evidence is not new evidence. Haag has known about the potential DNA evidence since he pleaded guilty. We note Haag did not provide the district court with the results of the DNA testing, and therefore, his claim is not supported by specific allegations.

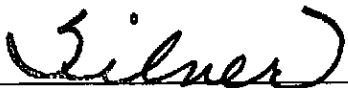
Further, Haag raised this actual innocence claim regarding the DNA evidence before. The Nevada Supreme Court rejected this claim because Haag made incriminating statements and the victim would have probably testified at trial, and therefore, he could not demonstrate actual innocence even if the DNA evidence tested as someone else’s DNA. *Haag v. Warden*, Docket No. 60277 (Order of Affirmance, October 8, 2012); *Haag v. State*, Docket No. 47924 (Order of Affirmance, February 28, 2007). Because this claim was previously raised and rejected, the doctrine of law of the case prevented further litigation of this claim and could not be avoided by a more detailed and focused argument. See *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). We therefore conclude the

district court did not err in denying Haag's petition as procedurally barred without holding an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Connie J. Steinheimer, District Judge  
Law Office of Thomas L. Qualls, Ltd.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>3</sup>Haag claims in his reply brief that this court should construe his postconviction petition for a writ of habeas corpus to be a petition requesting genetic marker analysis. This claim was raised for the first time in the reply brief, which is improper, and we decline to consider it. See NRAP 28(c).