

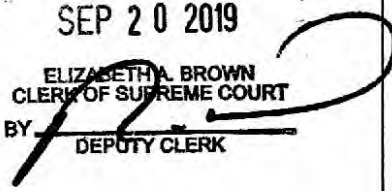
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICKEY TODD MAJOR,  
Appellant,  
vs.  
RENEE BAKER, WARDEN,  
Respondent.

No. 76716-COA

**FILED**

SEP 20 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Rickey Todd Major appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Major filed his petition on April 6, 2017, more than 18 years after issuance of the remittitur on direct appeal on September 23, 1998. *Major v. State*, Docket No. 28879 (Order Dismissing Appeal, September 3, 1998). Thus, Major's petition was untimely filed.<sup>1</sup> See NRS 34.726(1). Moreover, Major's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised a claim new and different from those raised

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<sup>1</sup>The district court entered a corrected judgment of conviction on June 5, 2005, but Major did not raise any claims concerning the corrected judgment of conviction in the instant petition. See *Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

in his previous petition.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Major'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), or that he was actually innocent such that it would result in a fundamental miscarriage of justice were his claims not decided on the merits, see *Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015).

Major contends the district court erred by dismissing his petition as procedurally barred. Major 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). However, this court has previously rejected a good-cause argument similar to Major's, see *Branham v. Warden*, 134 Nev., Adv. Op. 99, \*6-7, 434 P.3d 313, 316 (Ct. App. 2018), and Major fails to demonstrate *Branham* was wrongly decided. Therefore, Major is not entitled to relief based upon this good-cause claim.

Major also claimed he could demonstrate a fundamental miscarriage of justice to overcome the procedural bars because he is actually innocent. A petitioner must allege specific facts that, if true and not belied by the record, would entitle him to relief. *Berry*, 131 Nev. at 967, 363 P.3d at 1154-55. "[A]ctual innocence' means factual innocence, not mere legal insufficiency." *Bousley v. United States*, 523 U.S. 614, 623 (1998). Major


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<sup>2</sup>*Major v. Warden*, Docket No. 45012 (Order of Affirmance, October 19, 2006).

argued that "the facts in this case established that [he] only committed a second-degree murder." This is not factual innocence. Major thus failed to demonstrate he was actually innocent. We therefore conclude the district court did not err by dismissing Major's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Alvin R. Kacin, District Judge  
Federal Public Defender/Las Vegas  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk