

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDWARD STERLING SLADE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76712-COA

FILED

OCT 15 2019

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

ORDER OF AFFIRMANCE

Edward Sterling Slade appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 17, 2017, and supplemental petition filed on February 5, 2018. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Slade filed his petition 32 years after issuance of the remittitur on direct appeal on May 14, 1985, *see Slade v. State*, Docket No. 15006 (Order Dismissing Appeal, April 25, 1985), and more than 24 years after the effective date of NRS 34.726, *see* 1991 Nev. Stat., ch. 44, § 5, at 75-76, § 33, at 92; *Pellegrini v. State*, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). Slade's petition was therefore untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice, *see* NRS 34.726(1)—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). Further, because the State specifically pleaded laches, Slade was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).

Slade contends the district court erred by denying his petition as procedurally barred. Slade 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 claims that he is entitled to the retroactive application of *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000), and a new trial pursuant to *Riley v. McDaniel*, 786 F.3d 719 (9th Cir. 2015). A claim of good cause must be raised within one year of the claim becoming available. See *Rippo*, 134 Nev. at 422, 423 P.3d at 1097. Slade first raised this good-cause argument in a pleading filed more than one year after *Montgomery* (decided January 25, 2016), *Welch* (decided April 18, 2016), and *Riley* (decided May 15, 2015), and he did not attempt to explain the delay. Accordingly, these cases do not provide good cause to overcome Slade's procedural bars. Moreover, as separate and independent grounds to deny relief, this court has previously rejected a good-cause argument similar to Slade's, see *Branham v. Warden*, 134 Nev., Adv. Op. 99, *6-7, 434 P.3d 313, 316 (Ct. App. 2018), and the Nevada Supreme Court has expressly disagreed with *Riley*, see *Leavitt v. State*, 132 Nev. 829, 830, 386 P.3d 620, 620 (2016).

Slade also claimed he could demonstrate a fundamental miscarriage of justice to overcome the procedural bars because he is actually innocent. “[A]ctual innocence’ means factual innocence, not mere legal insufficiency.” *Bousley v. United States*, 523 U.S. 614, 623 (1998). Slade conceded below that he was not actually innocent of murdering the victim—just that he was innocent of first- as opposed to second-degree murder. This is not factual innocence. Further, Slade had the burden of proof to “demonstrate that, in light of all the evidence, it is more likely than not that


no reasonable juror would have convicted him.” *Id.* (internal quotation marks omitted). But Slade did not provide “all the evidence”: he provided a mere 13 pages of purported trial transcripts out of a 5-day jury trial. For these reasons, Slade failed to demonstrate he was actually innocent such that it would result in a fundamental miscarriage of justice were his underlying claims not reviewed on the merits.

Finally, because Slade failed to demonstrate a fundamental miscarriage of justice, he failed to overcome the presumption of prejudice to the State. *See* NRS 34.800. We therefore conclude the district court did not err by denying Slade’s petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk