

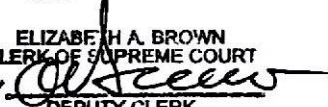
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PAULETTE W. PERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82385-COA

FILED

SEP 28 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Paulette W. Perry appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Perry filed her petition on August 8, 2018, more than 13 years after issuance of the remittitur on direct appeal on December 28, 2004. *See Perry v. State*, Docket No. 41256 (Order of Affirmance, December 1, 2004). Thus, Perry's petition was untimely filed. *See* NRS 34.726(1). Moreover, Perry's petition was successive because she had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, and it constituted an abuse of the writ as she raised claims new and different from those raised in her previous petition.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Perry'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).

¹*Perry v. State*, Docket No. 49768 (Order Dismissing Appeal, July 17, 2008).

The petitioner has the burden of proving good cause and actual prejudice sufficient to overcome the procedural bars. NRS 34.810(3); *State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003). “We give deference to the district court’s factual findings regarding good cause, but we will review the court’s application of the law to those facts de novo.” *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012).

Perry claimed she had good cause because she has new factual evidence that was not reasonably available to her until postconviction counsel was retained and a proper investigation was done. Perry argued this new evidence showed that trial counsel failed to inform her of a plea offer the State extended to resolve her case. “[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” *Missouri v. Frye*, 566 U.S. 134, 145 (2012). To demonstrate prejudice concerning the plea negotiation process, “a defendant must show the outcome of the plea process would have been different with competent advice.” *Lafler v. Cooper*, 566 U.S. 156, 163 (2012).

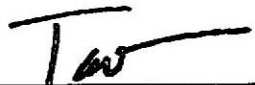
The district court conducted an evidentiary hearing concerning this issue. Perry’s trial counsel testified that his standard practice is to always inform a defendant of a plea offer and that he is obsessive about informing clients of plea offers. Counsel testified that if Perry did not hear of a plea offer, that is because he did not receive one. The district court found counsel’s testimony was credible. The district court also found the testimony Perry presented concerning a potential plea offer was insufficient to demonstrate the State actually extended a plea offer that would have resolved her case. Substantial evidence supports the district court’s findings, and this court will not “evaluate the credibility of witnesses

because that is the responsibility of the trier of fact," *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Given the district court's findings, Perry failed to meet her burden to demonstrate good cause and actual prejudice because she did not demonstrate a reasonable probability there was a plea offer from the State that she would have accepted absent counsel's failure to advise her of it. Therefore, we conclude the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Eric Johnson, District Judge
Resch Law, PLLC d/b/a Conviction Solutions
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk