

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD ALLAN NEWSOME, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83475-COA

FILED

APR 28 2022

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

ORDER OF AFFIRMANCE

Richard Allan Newsome, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 2, 2021.¹ Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

Newsome argues the district court erred by denying his petition as procedurally barred without conducting an evidentiary hearing. Newsome filed his petition more than three years after entry of the judgment of conviction on March 5, 2018.² Thus, Newsome's petition was untimely filed. See NRS 34.726(1). Moreover, Newsome's petition was successive insofar as he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits, and it constituted an

¹Newsome's pleading was titled "Supplemental Points and Authorities in Support of Writ of Habeas Corpus for Post Conviction Relief."

²Newsome did not pursue a direct appeal.

abuse of the writ as he raised claims new and different from those raised in his previous petition.³ See NRS 34.810(2).

Newsome's petition was procedurally barred absent a demonstration of good cause and actual prejudice, see NRS 34.726(1); 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). To warrant an evidentiary hearing on his claims to overcome the procedural bars, the claims had to be supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. See *id.* at 967, 363 P.3d at 1155. We review the denial of an evidentiary hearing for an abuse of discretion. *Id.* at 969, 363 P.3d at 1156.

Newsome first claimed he had good cause because he lacks legal sophistication. Ignorance of the law does not constitute good cause. See *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that a petitioner's mental disability and poor legal assistance from inmate law clerks did not establish good cause), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003). Thus, Newsome's claim did not provide good cause to overcome the procedural bars, and we conclude the district court did not abuse its discretion by rejecting this claim without conducting an evidentiary hearing.

³See *Newsome v. State*, No. 79044-COA, 2020 WL 3969799 (Nev. Ct. App. July 13, 2020) (Order of Affirmance). Newsome also filed a second postconviction petition for a writ of habeas corpus on October 9, 2020. He did not pursue an appeal from the district court's denial of his second petition.

Newsome next claimed he had good cause because he was unable to obtain postconviction counsel immediately after his conviction. Newsome was not entitled to the appointment of postconviction counsel. *See Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996). Thus, Newsome's claim did not provide good cause to overcome the procedural bars. *See Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). Therefore, we conclude the district court did not abuse its discretion by rejecting this good-cause claim without conducting an evidentiary hearing.

Newsome next claimed he had good cause because trial-level counsel had a conflict of interest arising from counsel's joint representation of Newsome and his mother in the same matter. Newsome's claim was available to be raised in a timely postconviction petition and was itself procedurally defaulted. Thus, Newsome's claim did not provide good cause to overcome the procedural bars. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, we conclude the district court did not abuse its discretion by rejecting this good-cause claim without conducting an evidentiary hearing.

Finally, Newsome appeared to claim that he would suffer a fundamental miscarriage of justice if his claims were not reviewed on the merits because he is actually innocent. Newsome claimed he lacked the intent necessary for the offense. To demonstrate actual innocence, a petitioner must show that "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), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). A petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence. *Bousley v. United States*, 523 U.S. 614, 623 (1998). Newsome’s claim involved legal, not factual innocence. Because Newsome neither identified any new evidence nor pleaded facts that demonstrated he was factually innocent, he did not make a colorable showing of actual innocence. Therefore, we conclude the district court did not abuse its discretion by rejecting this gateway actual innocence claim without conducting an evidentiary hearing.

Having concluded Newsome is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 9
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk