

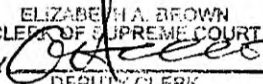
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGELO FERGUSON, A/K/A ANGELO
FERGUSEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84697-COA

FILED

NOV 16 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER AFFIRMING IN PART AND DISMISSING IN PART

Angelo Ferguson appeals from orders of the district court denying a postconviction petition for a writ of habeas corpus filed on October 25, 2021, and dismissing a postconviction petition for a writ of habeas corpus filed on February 22, 2022. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

October 25, 2021, petition

This court's review of this appeal reveals a jurisdictional defect. Specifically, the district court entered its order denying Ferguson's October 25, 2021, petition on February 28, 2022. The district court served notice of entry of that order on Ferguson on March 2, 2022. Ferguson dated his notice of appeal April 10, 2022, and the district court received it on April 14, 2022. Ferguson thus submitted his notice of appeal after the expiration of the 30-day appeal period prescribed by NRS 34.575. *See* NRAP 4(b); *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) (explaining that an untimely notice of appeal fails to vest jurisdiction in this court), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 426 n.18, 423 P.3d 1084, 1100 n.18 (2018). Accordingly, this court lacks jurisdiction to consider

Ferguson's appeal from the order denying his October 25, 2021, petition, and we dismiss this portion of the appeal.

February 22, 2022, petition

Ferguson filed his February 22, 2022, petition more than six years after issuance of the remittitur on direct appeal on May 13, 2015. *See Ferguson v. State*, No. 64665-COA, 2015 WL 1876847 (Nev. Ct. App. Apr. 15, 2015) (Order of Affirmance). Thus, Ferguson's petition was untimely filed. *See* NRS 34.726(1). Moreover, Ferguson's petition was successive because he 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 he raised claims new and different from those raised in his previous petitions.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Ferguson'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).

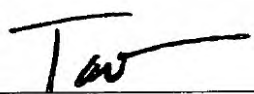
In his petition, it appears Ferguson claimed that the procedural bars should not apply because he is actually innocent. Ferguson did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998)

¹*Ferguson v. State*, No. 80658-COA, 2021 WL 462830 (Nev. Ct. App. Feb. 8, 2021) (Order of Affirmance); *Ferguson v. State*, No. 73172-COA, 2018 WL 1448709 (Nev. Ct. App. Mar. 14, 2018) (Order of Affirmance). Ferguson also filed postconviction petitions for a writ of habeas corpus in the district court on June 5, 2017, and June 13, 2017, but Ferguson did not appeal from the district court's orders denying those petitions.

(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). Therefore, we conclude the district court did not err by dismissing the petition as procedurally barred. Accordingly, we

ORDER the judgments of the district court AFFIRMED in part and DISMISSED in part.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Judge
Angelo Ferguson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk