

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICKEY TODD MAJOR,
Appellant,
vs.
TIM GARRETT, WARDEN, LOVELOCK
CORRECTIONAL CENTER,
Respondent.

No. 85152-COA

FILED

NOV 30 2022

ELIZABETH A. SEYMOUR
CLERK OF SUPREME COURT
BY *[Signature]*
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 argues the district court erred by dismissing his May 5, 2022, petition as procedurally barred. Major filed his petition more than 23 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. 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 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). Major's petition was procedurally barred absent a demonstration of good cause and actual prejudice, see NRS

¹*Major v. Warden*, No. 76716-COA, 2019 WL 4610790 (Nev. Ct. App. Sept. 20, 2019) (Order of Affirmance); *Major v. Warden*, Docket No. 45012 (Order of Affirmance, October 19, 2006).

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).

First, Major appeared to claim that he had good cause due to ineffective assistance of trial counsel. “[I]n order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted.” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Major’s ineffective-assistance-of-counsel claim was itself procedurally barred because he raised it in an untimely manner. And Major did not demonstrate an impediment external to the defense prevented him from raising his claim at an earlier time. *See id.* at 252-53, 71 P.3d at 506. Therefore, we conclude the district court did not err by dismissing this good-cause claim.


Second, Major appeared to claim that he had good cause due to prosecutorial misconduct. Major contended that the State failed to disclose information concerning a witness prior to trial and also permitted that witness to commit perjury during the trial. However, Major asserted in his petition that the parties discussed the relevant information concerning the witness during the trial. Thus, Major’s claim was reasonably available to be raised in a timely filed petition. And Major did not demonstrate that an impediment external to the defense prevented him from raising his claim at an earlier time. *See id.* Therefore, we conclude the district court did not err by dismissing this good-cause claim.

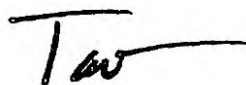
Third, Major claimed that the procedural bars should not prevent consideration of his claims on the merits because he is actually innocent. Major contended that he was improperly convicted because a

witness committed perjury during his trial. 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). Major’s claim was not based on new evidence. Thus, Major did not demonstrate that he was entitled to relief based on his actual-innocence claim. Therefore, we conclude that the district court did not err by dismissing the petition as procedurally barred.

Finally, Major argues on appeal that he has good cause due to the ineffective assistance of postconviction counsel. However, Major did not raise this good-cause claim in his petition, and we decline to consider it on appeal in the first instance. See *McNelson v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Alvin R. Kacin, District Judge
Rickey Todd Major
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk