

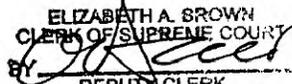
IN THE SUPREME COURT OF THE STATE OF NEVADA

TATIANA LEIBEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84920

FILED

FEB 16 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge. The district court denied appellant Tatiana Leibel's petition without holding an evidentiary hearing. We affirm.¹

Leibel's postconviction habeas petition was untimely because it was filed six years after remittitur issued on appeal from her judgment of conviction. See NRS 34.726(1); *Leibel v. State*, No. 68113, 2015 WL 9466548 (Nev. Dec. 18, 2015) (Order of Affirmance). Leibel's petition was also successive because she had previously filed several postconviction habeas petitions and an abuse of the writ because she asserted new claims. See NRS 34.810(2); *Leibel v. State*, No. 82594, 2021 WL 5992531 (Nev. Dec. 17, 2021) (Order of Affirmance); *Leibel v. State*, No. 77989, 2020 WL 3474162 (Nev. June 24, 2020) (Order of Affirmance). And Leibel asserted claims that could have been brought on direct appeal. See NRS 34.810(1)(b)(2) (addressing waiver of claims that could have been brought on appeal from a judgment of conviction following a trial). Thus, Leibel's petition was

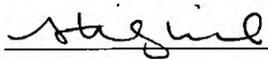
¹Having considered Leibel's pro se brief, we conclude that a response is not necessary. NRAP 46A(c). This appeal therefore has been submitted for decision based on the pro se brief and the record. See NRAP 34(f)(3).

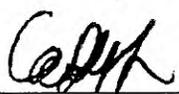
procedurally barred. Further, as the State specifically pleaded laches, Leibel had to overcome the presumption of prejudice to the State. *See* NRS 34.800(2).

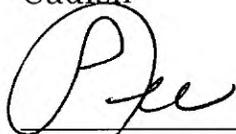
Leibel nevertheless argues that the procedural bars should be excused because she is actually innocent. *See Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001) (holding that a petitioner may overcome the procedural bars by showing that failure to consider her claims would amount to a fundamental miscarriage of justice because petitioner is actually innocent), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). The actual innocence gateway to reach the merits of a procedurally barred claim requires that Leibel show that “it is more likely than not that no reasonable juror would have convicted [her] in the light of . . . new evidence.” *Schlup v. Delo*, 513 U.S. 298, 327 (1995); *see also Pellegrini*, 117 Nev. at 887, 34 P.3d at 537. In other words, she must show that she is factually innocent. *See Bousley v. United States*, 523 U.S. 614, 623 (1998). As new evidence of her innocence, Leibel proffered photographs of the crime scene and autopsy and a news article regarding the prosecutor’s seeking a judgeship. But these materials have previously been presented to the court and thus do not constitute new evidence. And although Leibel relies on these materials to dispute the sufficiency of the evidence presented at trial, none of them provide a basis for us to conclude that no reasonable juror would have convicted Leibel in light of this information. *Cf. Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 875 (2014) (distinguishing actual innocence and insufficient evidence claims). Further, insofar as Leibel argues factual innocence, the materials proffered do not constitute “[n]ewly discovered evidence” to support a petition to establish factual innocence because the materials were

previously available. See NRS 34.930 (defining the term). Finally, Leibel has not demonstrated a fundamental miscarriage of justice to overcome the presumption of prejudice to the State based on laches under NRS 34.800. See *Little v. Warden*, 117 Nev. 845, 853, 34 P.3d 540, 545 (2001). The district court therefore did not err in rejecting Leibel's actual innocence claims, and we conclude that the district court correctly applied the mandatory procedural bars. See *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Having considered Leibel's contentions and concluded that relief is not warranted, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Stiglich


_____, J.
Cadish


_____, J.
Lee

cc: Hon. Nathan Tod Young, District Judge
Tatiana Leibel
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk