

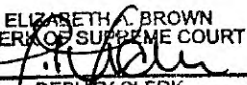
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID MICHAEL STEINHAUER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 86705-COA

FILED

SEP 28 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

David Michael Steinhauer appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on August 2, 2022. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Steinhauer filed his petition more than 19 years after issuance of the remittitur on direct appeal on July 1, 2003, *see Steinhauer v. State*, Docket No. 40024 (Order of Affirmance, June 5, 2003), and 14 years after entry of the corrected judgment of conviction on May 7, 2008.<sup>1</sup> Thus, Steinhauer's petition was untimely filed. *See* NRS 34.726(1). Moreover, Steinhauer'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.<sup>2</sup> *See* NRS

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<sup>1</sup>Steinhauer did not appeal from the corrected judgment of conviction.

<sup>2</sup>*See Steinhauer v. State*, No. 51128, 2008 WL 6096480 (Nev. Oct. 28, 2008) (Order of Affirmance); *Steinhauer v. State*, Docket No. 48799 (Order of Affirmance and Remanding for New Sentencing Hearing, March 6, 2008).

34.810(1)(b)(2); NRS 34.810(3).<sup>3</sup> Steinhauer’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(4), 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). Further, because the State specifically pleaded laches, Steinhauer was required to overcome the rebuttable presumption of prejudice to the State. *See* NRS 34.800(2).

Steinhauer appeared to allege he had good cause because his sentence is illegal. Steinhauer’s underlying claim was that his prior conviction for battery with intent to commit sexual assault was improperly used to adjudicate him as a habitual felon. Steinhauer’s claim was reasonably available to be raised in a timely petition, and he did not demonstrate an impediment external to the defense prevented him from doing so. Therefore, we conclude the district court did not err by denying this good-cause claim. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Steinhauer also appeared to allege he had good cause because he was actually innocent of being a habitual felon. Steinhauer’s claim was of legal, not factual, innocence, and thus he did not demonstrate “actual innocence.” *See Bousley v. United States*, 523 U.S. 614, 623 (1998); *see also Brown v. McDaniel*, 130 Nev. 565, 576, 331 P.3d 867, 875 (2014) (holding a petitioner failed to make a showing of actual innocence where he did “not

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<sup>3</sup>The subsections within NRS 34.810 were recently renumbered. We note the substance of the subsections cited herein was not altered. *See* A.B. 49, 82d Leg. (Nev. 2023).

identify any new evidence of his innocence"). Therefore, we conclude Steinhauer was not entitled to relief based on this claim.

Finally, Steinhauer did not overcome the presumption of prejudice to the State. See NRS 34.800(2). For the foregoing reasons, we conclude the district court did not err by dismissing the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Barry L. Breslow, District Judge  
David Michael Steinhauer  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk