

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAURICE DANIEL TALLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 86922-COA

FILED

JAN 30 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Maurice Daniel Talley appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 23, 2023. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Talley alleges the district court erred by denying his petition without first conducting an evidentiary hearing on Talley's claim to overcome procedural bars. Talley filed his petition more than nine years after entry of the judgment of conviction on January 24, 2014.<sup>1</sup> Thus, Talley's petition was untimely filed. *See* NRS 34.726(1). Moreover, Talley'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

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<sup>1</sup>Talley did not pursue a direct appeal.

those raised in his previous petition.<sup>2</sup> See NRS 34.810(3).<sup>3</sup> Thus, Talley's petition was procedurally barred unless he could overcome the bars.

Talley did not attempt to overcome the procedural bars by arguing good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(4). Instead, he argued 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). However, because the State specifically pleaded laches, Talley was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2) (presuming the State is prejudiced by a delay of more than five years); see also NRS 34.800(1) (setting forth how a petitioner can overcome prejudice to the State). To warrant an evidentiary hearing, a petitioner's claim to overcome procedural bars must be supported by specific factual allegations that are not belied by the record and, if true, would entitle them to relief. See *Berry*, 131 Nev. at 967, 363 P.3d at 1154-55.

To overcome the presumption of prejudice to the State that arose from the delay of more than five years, Talley had to demonstrate both that his "petition is based upon grounds of which [he] could not have had knowledge by the exercise of reasonable diligence before the circumstances

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<sup>2</sup>See *Talley v. State*, No. 68238-COA, 2015 WL 9594815 (Nev. Ct. App. Dec. 18, 2015) (Order of Affirmance).

<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).

prejudicial to the State occurred,” NRS 34.800(1)(a), and that “a fundamental miscarriage of justice has occurred in the proceedings resulting in the judgment of conviction,” NRS 34.800(1)(b). Talley claimed he had newly discovered evidence of his alibi defense demonstrating his actual innocence such that he suffered a fundamental miscarriage of justice. Talley offered declarations from himself, his mother, and his brother stating that Talley was home at the time of the offenses. Talley also offered a declaration from E. Peoples in which Peoples contradicted a witness’s grand jury testimony that the witness, Talley, and Peoples were together when Talley committed the offenses. In addition, Talley offered a forensic report analyzing surveillance video taken from his mother’s home purporting to show that Talley was home at the time of the offenses. Talley’s mother’s declaration alleged that she downloaded the surveillance video footage in January 2013 and asked a detective investigating the case to view the footage in February of that year.


Talley did not satisfy the requirements of NRS 34.800(1)(a) that are necessary to overcome the presumption of prejudice to the State, because he failed to allege that he could not have had knowledge of this evidence by the exercise of reasonable diligence before the five years had passed.<sup>4</sup> Accordingly, Talley failed to allege specific facts that, if true, would have allowed him to overcome the presumption of prejudice to the State.

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<sup>4</sup>As a result, we need not determine whether Talley satisfied the requirements of NRS 34.800(1)(b), which are also necessary to overcome the presumption of prejudice to the State.

Therefore, we conclude the district court did not err by denying the petition as procedurally barred without conducting an evidentiary hearing on Talley's claim to overcome the procedural bars. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Joseph Hardy, Jr., District Judge  
Maurice Daniel Talley  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk