

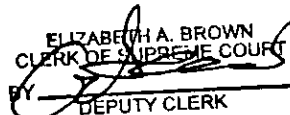
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRETT JONES,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 89670-COA

FILED

JUL 30 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Brett Jones appeals from a district court order denying a postconviction petition for a writ of a habeas corpus filed on July 1, 2024, and granting the State's motion to dismiss the petition. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Jones argues the district court erred by denying his petition without first conducting an evidentiary hearing on his claim that he could overcome the procedural bars based on newly discovered evidence of his actual innocence. Specifically, he contends forensic analysis of liver mortis and other physical indicators regarding the victim's time of death demonstrates he was not responsible for the victim's death because she died eight hours after he left the scene.

25-33391

Jones filed his petition more than 21 years after entry of the judgment of conviction on January 24, 2003.¹ Thus, Jones' petition was untimely filed. See NRS 34.726(1). Moreover, Jones' 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.² See NRS 34.810(3). Jones' petition was procedurally barred absent a demonstration of good cause and actual prejudice, NRS 34.726(1); NRS 34.810(4), or a showing that he was actually innocent such that "the failure to consider the petition on its merits would amount to a fundamental miscarriage of justice," see *Berry v. State*, 131 Nev. 957, 966, 363 P.3d 1148, 1154 (2015). To warrant an evidentiary hearing, a petitioner's claim to overcome the 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 v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154-55 (2015).

The State moved to dismiss Jones' petition based on laches pursuant to NRS 34.800. Because the petition was filed more than 5 years after the filing of the judgment of conviction, Jones was required to

¹Jones did not pursue a direct appeal.


²*Jones v. State*, No. 86715-COA, 2024 WL 150922 (Nev. Ct. App. Jan. 12, 2024) (Order of Affirmance); *Jones v. State*, No. 75120, 2018 WL 3913428 (Nev. Ct. App. July 31, 2018) (Order of Affirmance); *Jones v. State*, No. 54312, 2010 WL 3504144 (Nev. May 10, 2010) (Order of Affirmance); *Jones v. State*, Docket No. 41510 (Order of Affirmance, March 18, 2004).

overcome the presumption of prejudice to the State in responding to the petition and in its ability to retry him. See NRS 34.800(2). To overcome the presumptions, Jones 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 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); see also *Mitchell v. State*, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006) (indicating that a fundamental miscarriage of justice to overcome the procedural bars to an untimely or successive petition and to satisfy NRS 34.800(1)(b) can both be satisfied with a showing of actual innocence).

In response to the State’s motion to dismiss Jones’ petition based on laches, Jones alleged he could overcome the presumption of prejudice in NRS 34.800(1)(a) because he “would not have been able to know of this evidence prior to receiving his casefile” from his previous counsel. Jones alleged he received the casefile after the district court granted his July 13, 2020, motion seeking its delivery to him. Jones failed to demonstrate why this avenue for obtaining the evidence was not available to him previously. Thus, we conclude Jones failed to demonstrate his petition was based on grounds of which he could not have had knowledge through the exercise of reasonable diligence before the presumption of

prejudice to the State arose.³ Therefore, we conclude the district court did not err by dismissing the petition as barred by laches without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

³As a result, we need not determine whether Jones satisfied NRS 34.800(1)(b), which was also necessary to overcome the presumption of prejudice to the State.

⁴After the record on appeal had been submitted and briefing was complete, Jones filed a motion for expedited consideration of his appeal pursuant to NRAP 4(f) on April 30, 2025. We deny the motion as moot. Attached to his motion was evidence not presented to the district court in the form of affidavits executed by Jones and his wife in April 2025. This court's review is limited to the record made in and considered by the district court. *See Rippo v. State*, 134 Nev. 411, 429, 423 P.3d 1084, 1102 (2018) (providing that "appellate counsel could not have expanded the record before this court to include evidence that was not part of the trial record"); *Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (providing that this court lacks the "power to look outside of the record of a case" and "cannot consider matters not properly appearing in the record on appeal"). Therefore, we decline to consider this evidence. To the extent the motion contains argument or facts not presented to the district court, we decline to consider the argument or facts for the first time on appeal. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

cc: Hon. Nadia Krall, District Judge
Brett Dagan Jones
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk