

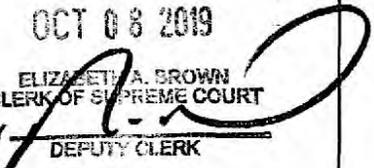
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROY DANIELS MORAGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78172-COA

FILED

OCT 08 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Roy Daniels Moraga appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 1, 2018. Eighth Judicial District Court, Clark County; James M. Bixler, Senior Judge.

Moraga filed his petition nearly 23 years after issuance of the remittitur on direct appeal on October 24, 1995.¹ Moraga's petition was therefore untimely filed. See NRS 34.726(1). His petition was also successive.² See NRS 34.810(1)(b)(2); NRS 34.810(2). Moraga's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice, see NRS 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

¹*Moraga v. State*, Docket No. 22901 (Order Dismissing Appeal, October 4, 1995).

²*Moraga v. State*, Docket No. 64639 (Order of Affirmance, April 10, 2014); *Moraga v. State*, Docket No. 61734 (Order of Affirmance, July 23, 2013); *Moraga v. State*, Docket No. 49049 (Order of Affirmance, August 16, 2007); *Moraga v. State*, Docket No. 42828 (Order of Affirmance, September 15, 2004); *Moraga v. State*, Docket Nos. 29321, 32542 (Order Dismissing Appeals, April 20, 1999).

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, Moraga was required to overcome the presumption of prejudice to the State. *See* NRS 34.800(2). To be entitled to an evidentiary hearing, Moraga's good-cause or actual-innocence arguments had to raise specific facts that, if true and not belied by the record, would have entitled his claims to be heard on the merits. *See Berry*, 131 Nev. at 969, 363 P.3d at 1156.

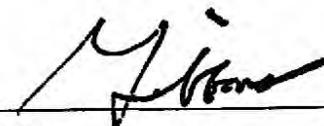
Moraga claimed he was actually innocent of the habitual criminal adjudication and, accordingly, could overcome the procedural bars. However, the Nevada Supreme Court has already affirmed the validity of Moraga's adjudication as a habitual criminal. *See Moraga v. State*, Docket No. 22901 (Order Dismissing Appeal, October 4, 1995). This ruling is the law of the case and applies to *all* subsequent appeals. *See Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." *Id.* at 316, 535 P.2d at 799. And Moraga failed to demonstrate he fell into an exception to the application of the law of the case. *See Tien Fu Hsu v. Cty. of Clark*, 123 Nev. 625, 630-32, 173 P.3d 724, 728-29 (2007).

As a separate and independent ground to deny relief, Moraga's claims were of legal, not factual, innocence, and thus did not demonstrate "actual innocence." *See Bousley v. United States*, 523 U.S. 614, 623 (1998). And because Moraga failed to demonstrate that the failure to consider his claims on the merits would result in a fundamental miscarriage of justice, he failed to overcome the presumption of prejudice to the State. *See* NRS 34.800(1)(b), (2).

To the extent Moraga claimed the decision in *Walker v. Deeds*, 50 F.3d 670 (9th Cir. 1995), constituted good cause to excuse his procedural bars, his claim failed. A good-cause claim must be raised within one year of its becoming available. *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018). Moraga filed his petition decades after *Walker* was decided but offered no explanation for the delay. Accordingly, *Walker* could not constitute good cause. For the foregoing reasons, we conclude the district court did not err by denying Moraga's petition as procedurally barred without first conducting an evidentiary hearing.

Finally, Moraga sought the appointment of postconviction counsel. Although he was facing a sentence of life in prison without the possibility of parole, the issues Moraga presented were not difficult, he appeared to comprehend the proceedings, and counsel was not necessary to proceed with any discovery. We therefore conclude the district court did not abuse its discretion by denying Moraga's request for court-appointed counsel. See NRS 34.750(1). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Hon. James M. Bixler, Senior Judge
Roy Daniels Moraga
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk