

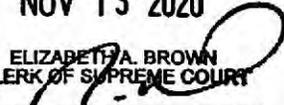
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DVONTAE DSHAWN RICHARD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80235-COA

**FILED**

NOV 13 2020

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

*ORDER OF AFFIRMANCE*

Dvontae Dshawn Richard appeals from an order of the district court denying his June 27, 2019, postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

First, Richard argues the district court erred by finding that many of his claims were procedurally barred pursuant to NRS 34.810(1)(b) because Richard could have raised them on direct appeal. In his petition, Richard contended that he was improperly charged with conspiracy, the State improperly consolidated his charges into one case, and the trial court lacked subject matter jurisdiction over his case because the Nevada Revised Statutes do not contain enacting clauses. These claims could have been raised on direct appeal, and Richard therefore had to demonstrate good cause for the failure to do so. *See* NRS 34.810(1)(b), (3).

In his petition, Richard did not attempt to demonstrate good cause, but rather appeared to contend he would suffer from a fundamental miscarriage of justice if his claims were not considered on their merits because he is actually innocent. However, Richard did not demonstrate actual innocence because he failed to show that "it is more likely than not

that no reasonable juror would have convicted him in light of . . . new evidence.” *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). Therefore, the district court did not err by finding Richard’s claims were procedurally barred. See *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (“[C]laims that are appropriate for a direct appeal must be pursued on direct appeal.”), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999).

Second, Richard argues the district court erred by treating his petition as a pro se document because he was actually represented by postconviction counsel. However, the record demonstrates Richard was not represented by postconviction counsel during the district court proceedings concerning his June 27, 2019, petition. Therefore, Richard failed to demonstrate he is entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Ronald J. Israel, District Judge  
Dvontae Dshawn Richard  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk