

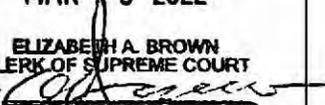
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ISMAIL T. YOUNG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83444-COA

FILED

MAR 15 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
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DEPUTY CLERK

ORDER OF AFFIRMANCE

Ismail T. Young appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 4, 2021. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

Young argues the district court erred by denying his petition. Young filed his petition more than two years after entry of the judgment of conviction on January 17, 2019.¹ Thus, Young's petition was untimely filed. *See* NRS 34.726(1). Moreover, Young's petition was successive insofar as 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 insofar as he raised claims new and different from those raised in his previous petition.² *See* NRS 34.810(2). Young's petition was procedurally barred absent a demonstration of good cause and actual prejudice, *see* NRS 34.726(1); NRS 34.810(3), or that he was actually innocent such that it

¹Young did not pursue a direct appeal.

²Young filed a first, timely postconviction petition for a writ of habeas corpus on November 14, 2019. He did not pursue an appeal of the district court's denial of the prior petition.

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).

Young appeared to claim that he would suffer a fundamental miscarriage of justice if his claims were not reviewed on the merits because he is actually innocent. In support of his claim of actual innocence, Young claimed he lacked the intent necessary for each of the offenses. To demonstrate actual innocence, a petitioner must 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). A petitioner must make a colorable showing of actual innocence—factual innocence, not legal innocence. *Bousley v. United States*, 523 U.S. 614, 623 (1998). Young’s claim involved legal, not factual innocence. Because Young neither identified any new evidence nor pleaded facts that demonstrated he was factually innocent, he did not make a colorable showing of actual innocence. Therefore, we conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jasmin D. Lilly-Spells, District Judge
Ismail T. Young
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk