

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN EDWARD BUTLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87210-COA

FILED

MAY 08 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

John Edward Butler appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 15, 2023. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Butler filed his petition more than 13 years after issuance of the remittitur on direct appeal on March 23, 2010. *See Butler v. State*, Docket No. 52260 (Order of Affirmance, February 25, 2010). Thus, Butler's petition was untimely filed. *See* NRS 34.726(1). Moreover, Butler'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 those raised in his previous petitions.¹ *See* NRS 34.810(1)(b)(2); NRS 34.810(3).² Butler's

¹*See Butler v. State*, No. 82966-COA, 2017 2021 WL 4261338 (Nev. Ct. App. Sep. 17, 2021) (Order of Affirmance); *Butler v. State*, No. 69953, 2017 WL 2628534 (Nev. Jun. 15, 2017) (Order of Affirmance).

²The 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).

petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(4).

Butler alleged he had good cause because “prosecutors failed to adhere to an agreement within the last year.” Butler claimed that following the entry of his judgment and sentence, he entered into a verbal agreement with federal prosecutors to testify in a federal matter in exchange for prosecutors petitioning Nevada to reduce his sentence in this case.

Butler failed to demonstrate the prejudice necessary to overcome the procedural bars. Such a showing necessarily implicates the merits of the claims raised. See *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018). Butler’s underlying claims alleging prosecutorial misconduct, the ineffective assistance of counsel, and error by the federal court all pertain to the alleged agreement to testify in the federal matter. The facts underlying these claims arose after the entry of Butler’s judgment of conviction and do not challenge the validity of his conviction or sentence in this case. Therefore, these claims were outside the scope of a postconviction petition for a writ of habeas corpus. See NRS 34.724(1). As a result, Butler could not demonstrate actual prejudice, and we conclude the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk