

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMAAR J. WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56273

FILED

MAY 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *J. Skoop*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant filed his petition on June 23, 2009, nearly six years after issuance of the remittitur on direct appeal on November 12, 2003. Williams v. State, Docket No. 39651 (Order of Affirmance, October 16, 2003). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition. See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's 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(3).

Appellant claims that the district court erred in denying his petition as procedurally barred because he demonstrated good cause and prejudice to overcome the procedural bars.

First, appellant claims that he demonstrated good cause because counsel failed to turn over appellant's file to him until June 20,

2007. Appellant fails to demonstrate that the district court erred in rejecting this claim. Even assuming that counsel's failure to provide the file constituted good cause for a portion of the delay, appellant fails to demonstrate good cause for the entire length of his delay. Appellant admits that he received the file by June 20, 2007, but failed to file his petition until June 23, 2009, two years later. In an attempt to demonstrate good cause for the two-year delay, appellant argues that he was pursuing federal relief and is now returning to state court in order to exhaust his remedies. Appellant's argument is without merit. This court has held that pursuing federal relief does not provide good cause for filing a late petition. See Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). Further, appellant's argument that the federal district court in Gulbransen v. Del Papa, No. 3:05-CV-00544, 2010 WL 3522285 (D. Nev. Aug. 31, 2010), determined that seeking federal relief provided good cause is unpersuasive. Gulbransen rested on federal procedural rules regarding habeas petitions in federal court; it therefore, is not binding as to the procedural rules for state habeas petitions. The law in this state is Colley, and we decline appellant's request to reexamine that holding. Therefore, appellant fails to demonstrate that the district court erred in denying this good cause claim.

Next, appellant claims that he demonstrated good cause because the district court never resolved appellant's post-conviction petition that was filed before sentencing. Appellant fails to demonstrate how the district court's failure to resolve his presentence petition provides good cause for this petition.¹ Further, appellant filed a subsequent

¹We note that appellant failed to follow the procedures for filing a post-conviction petition for a writ of habeas corpus when he filed this first
continued on next page . . .

petition which was litigated on the merits, and failed demonstrate why he did not raise this claim in that petition. Therefore, appellant fails to demonstrate that the district court erred in denying this claim.

Next, appellant claims that he demonstrated good cause because his trial and appellate counsel were ineffective. Appellant fails to demonstrate that this claim provided good cause because an ineffective-assistance-of-counsel claim cannot be good cause when the ineffective-assistance-of-counsel claim is itself procedurally barred. See Hathaway v. State, 119 Nev. 248, 253-54, 71 P.3d 503, 507 (2003); Harris v. Warden, 114 Nev. 956, 958-59, 964 P.2d 785, 787 (1998). The ineffective-assistance-of-counsel claims were procedurally barred themselves and do not explain his delay. Therefore, appellant fails to demonstrate that the district court erred in denying this claim.


Next, appellant claims that he demonstrated good cause because his equal protection rights were violated when the district court declined to appoint counsel to represent appellant on his previous post-conviction petition. Appellant fails to demonstrate that his equal protection rights were violated. A “random sampling” of the Federal Public Defender’s caseload does not provide evidence of an equal protection violation. Notably, the factors set forth in NRS 34.750(1) govern the discretionary appointment of counsel. Further, this court on appeal from appellant’s previous petition determined that the district

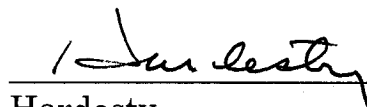
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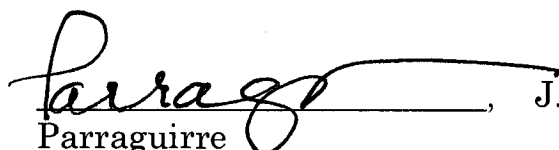
petition. Appellant filed the petition prior to being sentenced, he was still represented by counsel, he failed to follow the proper form, and it appears that he never served it on either the district attorney or the attorney general’s office. NRS 34.724(1); NRS 34.735; NRS 34.730(2). Therefore, it does not appear that the petition was properly before the district court.

court did not err in denying appellant's motion to appoint counsel. Williams v. State, Docket No. 44779 (Order of Affirmance, June 1, 2005). Therefore, this claim is barred by the doctrine of law of the case, which "cannot be avoided by a more detailed and precisely focused argument." Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Thus, appellant fails to demonstrate that the district court erred in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²

 _____, J.
Saitta

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. Jackie Glass, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We decline appellant's request to remand this case to the district court for further findings regarding the procedural bars. Further, we deny the respondent's motion to strike the reply brief and the appendix to the reply brief. However, we decline to entertain appellant's fundamental miscarriage of justice argument because appellant raised that claim for the first time in his reply brief. See NRAP 28(c). In addition, we decline appellant's request to take judicial notice of the order contained in the appendix to the reply brief.