

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC JON NEES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66859

FILED

MAR 17 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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.¹ Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant filed his petition on April 9, 2014, almost seven years after issuance of the remittitur on direct appeal on May 22, 2007. *Nees v. State*, Docket No. 48432 (Order of Affirmance, April 26, 2007). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed 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.² See NRS 34.810(1)(b)(2); NRS

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²*Nees v. State*, Docket No. 52781 (Order of Affirmance, February 3, 2010).

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).

First, appellant appeared to assert that he had good cause because his prior counsel failed to properly raise and exhaust his claims so as to permit federal court review. That counsel for appellant did not exhaust state remedies in appellant's earlier court proceedings did not demonstrate that there was an impediment external to the defense that should excuse the procedural bars. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); see also *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). To the extent appellant also asserts that he had good cause due to the ineffective assistance of post-conviction counsel for failing to exhaust state remedies, his claim lacked merit as appellant had no statutory right to post-conviction counsel, and thus the ineffective assistance of post-conviction counsel did not provide good cause for a successive and untimely petition. See *Crump v. Warden*, 113 Nev. 293, 303 & n.5, 934 P.2d 247, 253 & n.5 (1997); *McKague v. Warden*, 112 Nev. 159, 164-65 & n.5, 912 P.2d 255, 258 & n.5 (1996); see also *Brown v. McDaniel*, 130 Nev. ___, ___ 331 P.3d 867, 871-72 (2014) (explaining that post-conviction counsel's performance does not constitute good cause to excuse the procedural bars unless the appointment of post-conviction counsel was mandated by statute).


Second, appellant claimed that the procedural bars did not apply because he has timely filed the petition from the order staying his federal court proceedings. NRS 34.726(1) provides that a post-conviction petition for a writ of habeas corpus must be filed within one year after the entry of the judgment of conviction or the issuance of the remittitur from

the denial of a direct appeal from the judgment of conviction. *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). Because appellant did not file the instant petition within one year of the issuance of the remittitur from his direct appeal, appellant's petition was untimely filed. *See id.* Appellant failed to demonstrate that his pursuit of federal court relief provided an impediment external to the defense which should excuse the procedural bars. *See Hathaway*, 119 Nev. at 252, 71 P.3d at 506.

Finally, appellant claimed he had good cause because he is not legally trained and has to rely on inmate law clerks for legal help. Appellant's lack of legal knowledge and reliance upon inmate law clerks did not demonstrate that there was an impediment external to the defense that prevented him from complying with the procedural bars. *See Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner's claim of organic brain damage, borderline mental retardation and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post-conviction petition). Therefore, the district court did not err in denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Patrick Flanagan, District Judge
Eric Jon Nees
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk