

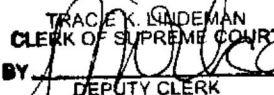
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO TONY MCKIBBINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67010

FILED

APR 14 2015

TRACIE K. LADEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Antonio Tony McKibbins' July 22, 2014, petition was untimely because it was filed more than seven years after the Nevada Supreme Court issued the remittitur on direct appeal on April 3, 2007.² See NRS 34.726(1). McKibbins' petition was also successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ because some of claims that he raised were new and different from those that he raised in the previous petition.³ See NRS 34.810(2). Consequently, McKibbins' petition was

¹This appeal has been submitted for decision without oral argument, see 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).

²See *McKibbins v. State*, Docket No. 46098 (Order of Affirmance, March 7, 2007).


³See *McKibbins v. State*, Docket No. 51899 (Order of Affirmance, January 23, 2009).


15-900397

procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

In an attempt to demonstrate good cause for his untimely and successive petition, McKibbins claimed that defense counsel provided ineffective assistance of counsel. However, McKibbins failed to explain how defense counsel's performance interfered with his ability to file a timely petition and why the claims that he raised in his second petition could not have been raised in his first petition.⁴ See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003) (defining "good cause"). Accordingly, we conclude that 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.
Silver

⁴To the extent that some of these claims were previously raised, the district court's disposition of McKibbins' claims on the merits in the first petition was a final decision that may not be relitigated through successive petitions. See *Washington v. State*, 104 Nev. 309, 311, 756 P.2d 1191, 1193 (1988).

cc: Hon. Valerie Adair, District Judge
Antonio Tony McKibbins
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk