

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AKAPHONG SOMEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68585

FILED

DEC 29 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 postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant Akaphong Somee filed his petition on April 22, 2015, more than six years after issuance of the remittitur on direct appeal on February 17, 2009. *Somee v. State*, Docket No. 51889 (Order of Affirmance, January 22, 2009). Thus, Somee's petition was untimely filed. See NRS 34.726(1). Moreover, Somee's petition was successive because he had previously filed a postconviction 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(2).

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

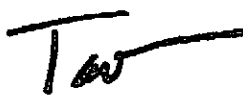
²*Somee v. State*, Docket No. 61912 (Order of Affirmance, May 14, 2013).

Somee's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Somee claimed ineffective assistance of his postconviction counsel for his prior petition constituted good cause. Somee's claim lacked merit as he had no statutory right to post-conviction counsel, and thus the ineffective assistance of postconviction counsel did not provide good cause for a successive and untimely petition. *See McKague v. Warden*, 112 Nev. 159, 912 P.2d 255 (1996); *Crump v. Warden*, 113 Nev. 293, 934 P.2d 247 (1997); *see also Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 870 (2014) (explaining that postconviction counsel's performance does not constitute good cause to excuse the procedural bars unless the appointment of postconviction counsel was mandated by statute). Therefore, the district court did not err in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Akaphong Somee
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk