

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FLOYD LAWSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67233

**FILED**

DEC 29 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Floyd Lawson claims the district court erred by finding his "supplemental" petition was an independent petition and by denying the petition as untimely and successive. We disagree.

Lawson timely filed his first postconviction petition for a writ of habeas corpus on September 24, 2011. The district court orally denied the petition on November 28, 2011, and the written order denying the petition was filed on December 13, 2011. Between the oral denial of his petition and entry of the written order denying the petition, Lawson filed a pro se motion for an extension of time to file a reply to the State's opposition to his petition.

The district court appointed counsel to assist Lawson with the motion and new counsel was appointed on March 28, 2012. On April 4, 2012, the motion was denied as moot. Despite this, a briefing schedule was subsequently set and counsel filed "Petitioner's Supplement to Writ of Habeas Corpus." The State responded and moved to dismiss the

“supplement.” The State argued that, despite the title of “supplement,” the document was a wholly independent petition and could not supplement the original petition because the original petition had been resolved on the merits before the “supplement” was filed. The State further argued, because the “supplement” was a wholly independent petition, the court should dismiss the petition as procedurally barred.

The district court found that the “supplement” was a second, untimely, and successive petition. To the extent Lawson asserted that he had good cause to excuse the procedural defects due to a deteriorating brain condition, a delay in the transfer of his files, or the appointment of counsel and the setting of a briefing schedule, the district court concluded Lawson failed to demonstrate good cause to overcome the procedural bars and denied the petition.


Because the “supplement” was filed a year after the district court denied Lawson’s first petition, we conclude the district court did not err by finding that the “supplement” was a second petition. Further, because it was filed more than a year after entry of the judgment of conviction<sup>1</sup> and raised the same claim that was raised in Lawson’s previous petition, we conclude the district court did not err by finding the petition was untimely, successive, and procedurally barred absent a demonstration of good cause. See NRS 34.726(1); NRS 34.810(1)(b)(2); NRS 34.810(2). Finally, we conclude the district court did not err by concluding that Lawson failed to demonstrate good cause to overcome the procedural bars. See *State v. Eighth Judicial Dist. Ct. (Riker)*, 121 Nev.

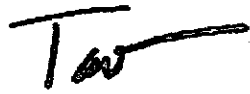
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<sup>1</sup>The judgment of conviction was entered on March 16, 2011. Lawson did not appeal the judgment of conviction.

225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to postconviction habeas petitions is mandatory.”); *Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995) (holding that counsel’s failure to send petitioner his files did not constitute good cause to excuse the untimely filing of a postconviction petition); *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 postconviction petition). Therefore, we conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Douglas Smith, District Judge  
Nguyen & Lay  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

<sup>2</sup>Because we conclude the district court properly denied the petition as procedurally barred, we further conclude the district court did not err by not addressing the merit of the claim raised in Lawson’s petition.