

IN THE SUPREME COURT OF THE STATE OF NEVADA

KASARD OMAR BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66919

FILED

MAR 17 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE


This is an appeal from a district court order denying appellant Kasard Brown's postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

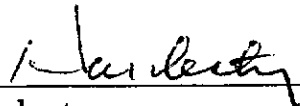
Brown filed his petition on March 7, 2014, more than 8 years after remittitur issued from his direct appeal on December 8, 2005. *Brown v. State*, Docket No. 40718 (Order Vacating Prior Order and Affirming the Judgment of Conviction, October 25, 2005). Thus, his petition was untimely filed. NRS 34.726. The petition was also successive because Brown had previously sought postconviction relief. *Brown v. State*, Docket No. 52829 (Order of Affirmance, April 28, 2011). Accordingly, the petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726; NRS 34.810(3). Further, because the State pleaded laches, Brown was required to overcome the presumption of prejudice to the State. See NRS 34.800.

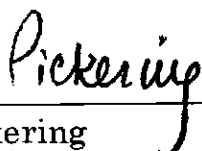
Brown argues that he is not required to demonstrate good cause and prejudice because his claims are not new. Brown is mistaken. A petitioner who files a second petition must demonstrate good cause and prejudice for presenting a new claim "or for presenting [a] claim again."

NRS 34.810(3)(a) (emphasis added). As an alternative argument, Brown contends that he demonstrated good cause because the factual basis of one of his underlying claims was not reasonably available when he litigated his first postconviction petition. This contention lacks merit; moreover, it was not raised within a reasonable time and would not provide cause to review the remainder of Brown's claims. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).¹ Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Pickering

Hon. Kenneth C. Cory, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹To the extent Brown argues that postconviction counsel's ineffectiveness and his pursuit of federal remedies constitute good cause, no relief is warranted. See *Brown v. McDaniel*, 130 Nev., Adv. Op. 60, 331 P.3d 867, 870 (2014) (holding that *Martinez v. Ryan*, 566 U.S. ___, (2012) does not apply to Nevada postconviction procedures); see also *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (holding that the pursuit of federal remedies does not constitute good cause). We decline to consider Brown's argument regarding institutional interference because it was not fairly raised below.