

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDERIC GREEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68271

FILED

MAR 16 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant Frederic Green filed his petition on December 11, 2014, nearly 11 years after issuance of the remittitur on direct appeal on January 6, 2004. *Green v. State*, 119 Nev. 542, 80 P.3d 93 (2003). Thus, Green's petition was untimely filed. See NRS 34.726(1). Moreover, Green's petition was successive because he had previously filed two postconviction petitions 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 petitions.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Green's petition was procedurally barred absent a demonstration of good

¹*Green v. State*, 47318 (Order of Affirmance, June 4, 2007); *Green v. State*, 59153 (Order of Affirmance, June 13, 2012).

cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Green claims he has good cause to overcome the procedural bars pursuant to *Lafler v. Cooper*, 566 U.S. ___, 132 S. Ct. 1376 (2012) because counsel was ineffective in communicating a plea offer. This claim is without merit. First, this claim was raised for the first time nearly two years after *Lafler* was decided in 2012, and Green fails to demonstrate good cause for the entire length of his delay. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

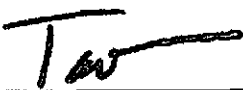
Second, this claim of ineffective assistance of counsel was always available to be raised and Green fails to demonstrate why he waited 11 years to raise it. See *id.* Further, because his case was final when *Lafler* was decided, Green failed to demonstrate the case would apply retroactively to him. Even if *Lafler* announced a new rule of constitutional law, Green's conviction was already final when the rule was announced and he has not established that either exception for retroactive application applies. See *Colwell v. State*, 118 Nev. 807, 820, 59 P.3d 463, 472 (2002).


Finally, we note Green fails to support his claim that counsel was ineffective with specific facts that, if true, would have entitled him to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). He fails to specify what the terms of the rejected plea agreement were or how counsel failed to communicate with him regarding the plea offer. Therefore, he failed to demonstrate good cause to excuse the

procedural bar and we conclude 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. Janet J. Berry, District Judge
Story Law Group
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk