

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN RANDALL QUINTERO,
Appellant,
vs.
ISIDRO BACA, IN HIS OFFICIAL
CAPACITY AS WARDEN,
Respondent.

No. 68565

FILED

MAR 16 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 granting the State's motion to dismiss a postconviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Appellant John Quintero filed his petition on October 9, 2014, more than seven years after the Nevada Supreme Court issued the remittitur on direct appeal on August 14, 2007.² See NRS 34.726(1). Moreover, Quintero'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

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).

²See *Quintero v. State*, Docket No. 48505 (Order of Affirmance, July 17, 2007).

from those raised in his previous petition.³ See NRS 34.810(1)(b)(2); NRS 34.810(2). Quintero's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

First, Quintero claimed he had good cause to excuse the procedural bars because the district court, itself, caused the delay by failing to conduct a timely evidentiary hearing and address all of the claims in his original habeas petition. We conclude Quintero did not meet his burden to plead and prove specific facts that demonstrate an impediment external to the defense prevented him from complying with the procedural rules. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503 506 (2003); *State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003).

Second, Quintero claimed he had good cause to excuse the procedural bars because he was deprived of effective assistance of postconviction counsel. Because Quintero did not have a right to postconviction counsel, ineffective assistance of postconviction counsel did not constitute good cause to excuse the procedural bars. See *McKague v. Warden*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996).


Third, Quintero claimed he had good cause to excuse the procedural bars because he was alleging the grounds for relief raised in his original petition and new grounds for relief in the instant petition so they would be exhausted for purposes of federal review. We conclude Quintero did not demonstrate good cause because litigating a petition in

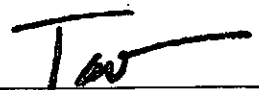
³See *Quintero v. Warden*, Docket No. 55279 (Order of Affirmance, June 8, 2011).


federal court and exhausting claims in order to seek federal court review do not establish good cause to excuse a procedural bar. *See Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

For the foregoing reasons we conclude Quintero failed to overcome the procedural bars to his petition, and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Lynne K. Simons, District Judge
John Randall Quintero
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

⁴We have reviewed all documents Quintero has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Quintero has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.