

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT ANTHONY SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69054

FILED

APR 20 2016

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction motion to withdraw his guilty plea.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

We conclude the district court properly construed appellant Robert Smith's July 1, 2015, motion to withdraw his guilty plea as a postconviction petition for a writ of habeas corpus. *See Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 628 (2014) (holding postconviction motions to withdraw a guilty plea should be construed as postconviction petitions for writs of habeas corpus because a postconviction petition for a writ of habeas corpus is the exclusive remedy to challenge the validity of a guilty plea after sentencing). Smith filed his motion more than 2 years after entry of the judgment of conviction on June 2, 2013.² Thus, Smith's motion was untimely filed. *See NRS 34.726(1)*. Moreover, Smith's motion was successive because he had previously filed a postconviction petition


¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).


²No direct appeal was taken.


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.³ See NRS 34.810(1)(b)(2); NRS 34.810(2). Smith'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).

On appeal, Smith fails to argue the district court erred by determining his motion was procedurally barred.⁴ Instead, he argues the district court erred by failing to hold an evidentiary hearing on his claims regarding his plea and ineffective assistance of counsel. Because Smith fails to demonstrate the district court erred by denying the motion based on the procedural bars, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

³*Smith v. State*, Docket No. 66812 (Order of Affirmance, March 17, 2015).

⁴We note Smith did not allege good cause and prejudice below to overcome the procedural bars. Instead he erroneously claimed the procedural bars did not apply to a postconviction motion to withdraw a guilty plea. See *Harris*, 130 Nev. at ___, 329 P.3d at 628.

cc: Hon. Valerie Adair, District Judge
Robert Anthony Smith
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk