

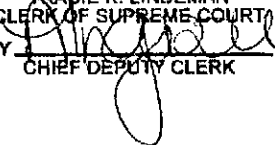
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CODY C. LEAVITT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69632

**FILED**

JUN 22 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant Cody C. Leavitt filed his petition on November 3, 2015, more than six years after entry of the judgment of conviction on January 23, 2009.<sup>2</sup> Thus, Leavitt's petition was untimely filed. *See* NRS 34.726(1). Moreover, Leavitt's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus and it was denied on the merits.<sup>3</sup> *See* NRS 34.810(2). Leavitt's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Leavitt argues he has good cause because the prison confiscated his legal materials and the prison law library is inadequate.

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

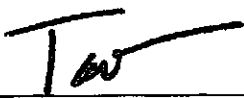
<sup>2</sup>Leavitt did not pursue a direct appeal.

<sup>3</sup>*Leavitt v. State*, Docket No. 57196 (Order of Affirmance, January 12, 2012).

Leavitt fails to demonstrate lack of access to his legal materials or the library deprived him of meaningful access to the courts. *See Lewis v. Casey*, 518 U.S. 343, 351 (1996) (“an inmate cannot establish relevant actual injury simply by establishing that his prison’s law library or legal assistance program is subpar in some theoretical sense”). Leavitt filed numerous motions and documents in the district court, which indicated his access to the court was not improperly limited by restrictions on his use of legal materials or access to the prison law library. *See id.* (a prisoner must “demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.”). Moreover, Leavitt did not demonstrate any of his claims could not have been raised in his prior petition, and therefore, he fails to demonstrate official interference caused him to be unable to comply with the procedural bars. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). We conclude the district court did not err in denying the petition as procedurally barred and we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

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

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

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

<sup>4</sup>We have reviewed all documents Leavitt has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Leavitt 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.

cc: Hon. Michael Villani, District Judge  
Cody C. Leavitt  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk