

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROSENDO VASQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69532

FILED

SEP 21 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 a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Appellant Rosendo Vasquez's September 17, 2015, petition was untimely because it was filed more than eight years after entry of the judgment of conviction on April 26, 2007.² See NRS 34.726(1). Vasquez's petition was also successive because he had previously filed a postconviction petition for a writ of habeas corpus, and it constituted an abuse of the writ because he raised claims new and different from those raised in his previous petition.³ See NRS 34.810(2). Accordingly, Vasquez's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

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).

²No direct appeal was taken.

³See *Vasquez v. State*, Docket No. 50916 (Order of Affirmance, October 2, 2009).

First, Vasquez claimed he had good cause to excuse the procedural bars because defense counsel was ineffective for coercing his guilty plea. The district court found this good cause claim was barred by the doctrine of the law of the case because it was raised in Vasquez's first habeas petition and rejected by the Nevada Supreme Court on appeal. We conclude the claims raised in Vasquez's first petition are substantially similar to this claim of good cause and therefore the district court did not err in this regard. *See Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975); *Vasquez*, Docket No. 50916 (Order of Affirmance, October 2, 2009).

Second, Vasquez claimed he had good cause to excuse the procedural bars because defense counsel was ineffective for failing to perfect an appeal. The district court rejected this good cause claim because Vasquez failed to show an impediment external to the defense prevented him from raising this claim in his first petition. The record supports the district court's finding and we conclude it did not err in this regard. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

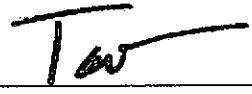
Third, Vasquez claimed he had good cause to excuse the procedural bars because postconviction counsel was ineffective. The district court rejected this good cause claim because Vasquez was not entitled to the effective assistance of postconviction counsel. The record supports the district court's finding and we conclude it did not err in this regard. *See McKague v. Warden*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996).

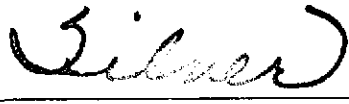
We conclude the district court did not err by summarily denying Vasquez's habeas petition without appointing counsel or

conducting an evidentiary hearing, *see* NRS 34.750(1); NRS 34.770(2), and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. William D. Kephart, District Judge
Rosendo Vasquez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk