


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL DWAYNE BYARS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70365

FILED

NOV 18 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Michael Byars appeals from a district court order dismissing the postconviction petition for a writ of habeas corpus he filed on November 17, 2015.¹ Tenth Judicial District Court, Churchill County; Robert E. Estes, Senior Judge.

Byars claims the district court erred by not allowing his habeas petition to proceed because he did all he could do to prevent any confusion between the issues raised in each of his two petitions.²

The district court found Byars had previously filed a postconviction petition for a writ of habeas corpus on March 23, 2015, and it considered each of the grounds for relief Byars raised in his second

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


²Byars also claims the district court erred by dismissing his petition because it could not render a final decision if it lacked jurisdiction to consider his petition. However, this issue arose in the first petition and not in the instant petition. *See Byars v. State*, Docket No. 69276 (Order of Affirmance, July 26, 2016) (addressing Byars' claim that the district court erred in denying his habeas petition filed on March 23, 2015, for lack of jurisdiction).

petition. It found Byars could have raised his ineffective-assistance-of-counsel claims in his first habeas petition and he had not shown good cause for his failure to do so. Byars' unconstitutional search and seizure claims were previously resolved on their merits and, even if they were not barred by the doctrine of res judicata, they could have been raised in Byars' first habeas petition and he had not shown good cause for his failure to do so. Byars' claims that the district court abused its discretion by denying his motion to withdraw trial counsel and the trooper lacked probable cause to make the traffic stop could both have been raised on direct appeal and Byars had not shown good cause for his failure to do so. And Byars' double jeopardy claim had previously been raised and decided on direct appeal.

The record on appeal supports the district court's factual findings, and we conclude the district court did not err by dismissing Byars' procedurally barred petition without appointing counsel. *See* NRS 34.750(1); NRS 34.810(1)(b)(2), (3); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005) (application of procedural default rules is mandatory); *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Tenth Judicial District Court
Hon. Robert E. Estes, Senior Judge
Michael Dwayne Byars
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk