

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAMARR ROWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70720

FILED

JAN 19 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Lamarr Rowell appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Rowell argues the district court erred in concluding his petition was procedurally barred. Rowell filed his petition on March 28, 2016, more than six years after issuance of the remittitur on direct appeal on January 15, 2010. *Rowell v. State*, Docket No. 51789 (Order of Affirmance, September 9, 2009). Thus, Rowell's petition was untimely filed. See NRS 34.726(1). Moreover, Rowell's petition was successive because he had previously filed several postconviction petitions 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 petitions.² See

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

²*Rowell v. State*, Docket Nos. 61869 and 61870 (Order of Affirmance, May 13, 2013). Rowell also filed a postconviction petition for a writ of habeas corpus on January 28, 2010, but withdrew that petition. In addition, Rowell filed petitions on March 5, 2012, and November 5, 2015, but Rowell did not appeal from the denial of those petitions.

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NRS 34.810(2). Rowell's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Rowell first claimed he had good cause due to ineffective assistance of his prior counsel. However, these claims of ineffective assistance of counsel were procedurally barred because they were raised in an untimely manner and in a successive petition, and, therefore, cannot constitute good cause for additional procedurally barred claims. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (“[I]n order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally barred.”).


Second, Rowell claimed he had good cause because he does not have physical access to the prison law library and has to rely upon an inmate paging system for legal research. Rowell also argued he has good cause because the prison lacks persons with legal training to help him with his case.

Rowell failed to demonstrate lack of access to the law library or legal assistants 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”). Rowell filed previous postconviction petitions for a writ of habeas corpus and additional documents in the district court, which indicated his access to the court was not improperly limited by restrictions on access to the prison law library or legal assistants. 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, Rowell did not demonstrate any of his claims could not have been raised in his prior petition, and therefore, he failed to demonstrate official interference

caused him to be unable to comply with the procedural bars. See *Hathaway*, 119 at 252, 71 P.3d at 506.

Next, Rowell argues the district court erred in declining to appoint postconviction counsel to represent him. The appointment of postconviction counsel was discretionary in this matter. See NRS 34.750(1). After a review of the record, we conclude the district court did not abuse its discretion in this regard as this matter was not sufficiently complex so as to warrant the appointment of postconviction counsel.

Having concluded Rowell is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.³


_____, J.
Tao


_____, J.
Gibbons

cc: Lamarr Rowell
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³The Honorable Abbi Silver, Chief Judge, did not participate in the decision in this matter.