

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOUGLAS HARRY WARENBACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72280

FILED

JUL 12 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Douglas Harry Warenback appeals from an order of the district court denying a motion to withdraw a guilty plea.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Warenback filed his motion to withdraw guilty plea on December 12, 2016. The district court construed the motion as a postconviction petition for a writ of habeas corpus and denied the petition as procedurally barred. On appeal, Warenback argues the district court erred in construing his motion as a postconviction petition for a writ of habeas corpus.

In *Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 628 (2014), the Nevada Supreme Court directed district courts to construe postconviction motions to withdraw a guilty plea as postconviction petitions for a writ of habeas corpus because such a petition is the

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

exclusive remedy to challenge the validity of a guilty plea. The record demonstrates Warenback filed a postconviction motion to withdraw his guilty plea challenging the validity of his guilty plea. Due to the nature of Warenback's motion and claims contained within the motion, the district court properly construed the motion as a postconviction petition for a writ of habeas corpus.


Because the district court properly construed Warenback's motion as a postconviction petition for a writ of habeas corpus, the motion was subject to the procedural bars contained within NRS Chapter 34. See *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Warenback filed his motion on December 12, 2016, almost three years after entry of the judgment of conviction on December 17, 2013.² Thus, Warenback's motion was untimely filed. See NRS 34.726(1). Moreover, Warenback's motion was successive because he had previously filed a postconviction petition 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.³ See NRS 34.810(2). Warenback's motion was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).


²Warenback did not pursue a direct appeal.


³*Warenback v. State*, Docket No. 71056 (Order of Affirmance, March 23, 2017); *Warenback v. State*, Docket No. 69536 (Order of Affirmance, May 18, 2016); *Warenback v. State*, Docket No. 66294 (Order of Affirmance, April 14, 2015).

Warenback did not attempt to demonstrate good cause to overcome the procedural bars. Therefore, the district court properly denied the motion as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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