

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH LARAY THOMAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71452

**FILED**

JUL 12 2017

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

*ORDER OF AFFIRMANCE*

Kenneth Laray Thomas appeals 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; Kathleen E. Delaney, Judge.

Thomas filed his petition<sup>2</sup> on June 5, 2015, more than four years after entry of the judgment of conviction on April 18, 2011.<sup>3</sup> Thus, Thomas' petition was untimely filed. See NRS 34.726(1). Moreover, Thomas' petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus, and it constituted an

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

<sup>2</sup>Thomas filed a motion to withdraw his guilty plea and, following the district court's denial of the motion, the Nevada Supreme Court directed the district court to construe the motion as a postconviction petition for a writ of habeas corpus and reconsider it pursuant to application of the procedural requirements of NRS Chapter 34. *Thomas v. State*, Docket No. 68416 (Order of Reversal and Remand, March 17, 2016). Upon remand, the district court construed the motion as a postconviction petition, granted Thomas the opportunity to cure any procedural defects, and then denied the petition as procedurally barred.


<sup>3</sup>Thomas did not pursue a direct appeal.


abuse of the writ as he raised claims new and different from those raised in his previous petition.<sup>4</sup> See NRS 34.810(2). Thomas' petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Thomas did not attempt to overcome the procedural bars. Rather, Thomas argues the district court erred in denying his petition without appointing postconviction counsel. 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. See *Renteria-Novoa v. State*, 133 Nev. \_\_\_, \_\_\_, 391 P.3d 760, 760-61 (2017). Therefore, we conclude the district court did not err in denying the petition and we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

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

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

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

<sup>4</sup>*Thomas v. State*, Docket No. 63801 (Order of Affirmance, December 11, 2014).

<sup>5</sup>Thomas also asserts the district court clerk did not include the transcripts of three district court hearings with the record it transmitted to this court. However, the transcripts of the three hearings are included in the record on appeal. Therefore, Thomas' claim lacks merit.

cc: Hon. Kathleen E. Delaney, District Judge  
Kenneth Laray Thomas  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk