

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES KENNETH WAYNE MATLEAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71282

FILED

JUL 12 2017

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

ORDER OF AFFIRMANCE

James Kenneth Wayne Matlean appeals from a district court order dismissing the postconviction petition for a writ of habeas corpus he filed on May 2, 2016.¹ Ninth Judicial District Court, Douglas County; David R. Gamble, Senior Judge.

Matlean's petition was untimely because it was filed nearly three years after the remittitur on direct appeal was issued on May 9, 2013,² and it was successive because he had previously filed a postconviction petition for a writ of habeas corpus.³ See NRS 34.726(1); NRS 34.810(2). Therefore, Matlean'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).

²See *Matlean v. State*, Docket No. 60720 (Order of Affirmance, April 10, 2013).

³See *Matlean v. State*, Docket No. 66038 (Order of Affirmance, December 16, 2015).


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Matlean claimed he had good cause to excuse the procedural bars because his appellate counsel and postconviction counsel refused to raise the claims he was presenting in the instant petition for exhaustion purposes. However, the district court found Matlean had failed to demonstrate an impediment external to the defense prevented him from raising these claims in his first habeas petition, his claim of ineffective assistance of postconviction counsel did not constitute good cause, and his need to exhaust his claims before seeking federal relief did not constitute good cause.

We conclude the district court properly applied the procedural bars and did not err by dismissing Matlean's petition. *See Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871-72 (2014); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005); *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), *abrogated by statute on other grounds as recognized by State v. Huebler*, 128 Nev. 192, 197 n.2, 275 P.3d 91, 95 n.2 (2012). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Silver


_____, J.
Tao

⁴The Honorable Michael Gibbons did not participate in the decision in this matter.

cc: Ninth Judicial District Court
Hon. David R. Gamble, Senior Judge
James Kenneth Wayne Matlean
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk