

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL MAURICE FULTZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71943

FILED

AUG 16 2017

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

ORDER OF AFFIRMANCE

Michael Maurice Fultz appeals from an order of the district court dismissing the postconviction petition he filed on August 15, 2016.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Fultz filed his petition more than 20 years after entry of the judgment of conviction on April 22, 1996.² Thus, Fultz' petition was untimely filed. *See* NRS 34.726(1). Fultz' petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* Moreover, because the State specifically pleaded laches, Fultz was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

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

²Fultz filed an untimely notice of appeal from his judgment of conviction. *Fultz v. State*, Docker No. 29608 (Order Dismissing Appeal, December 31, 1996).


First, Fultz claimed he had good cause to overcome the procedural bars because his competency claim was a jurisdictional claim. The Nevada Supreme Court previously rejected this claim, and therefore, this claim was barred by the doctrine of law of the case. *See Hall v. State*, 91 Nev. 314, 314-15, 535 P.2d 797, 798-99 (1975). Therefore, the district court did not err by finding Fultz failed to demonstrate good cause.

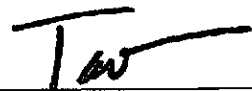
Second, Fultz claimed his history of mental health issues and his lack of access to the law library provided good cause to overcome the procedural bars. Fultz failed to demonstrate his mental health issues or lack of access to the law library provided good cause. Fultz previously filed a postconviction motion to withdraw his guilty plea raising similar claims regarding his competency, and he failed to demonstrate why the instant claims regarding his competency could not have been raised in that motion. Therefore, the district court did not err by finding Fultz failed to demonstrate good cause.

Finally, Fultz failed to overcome the presumption of prejudice to the State because his claims were available to be raised in an earlier petition and he failed to demonstrate a fundamental miscarriage of justice if he was not granted relief. *See NRS 34.800; Mitchell v. State*, 122 Nev. 1269, 1273-1274, 149 P.3d 33, 36 (2006). Accordingly, we conclude the district court did not err by dismissing the petition as procedurally barred without holding an evidentiary hearing. *See Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning procedurally barred

claims when the petitioner cannot overcome the procedural bars). Thus, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Stefany Miley, District Judge
Michael Maurice Fultz
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We conclude the district court did not err by not appointing postconviction counsel to represent Fultz in this matter. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. ___, 391 P.3d 760, 760-61 (2017). Further, we note that while the district court's order states it heard arguments from counsel at the hearing dismissing the petition, the minutes indicate the district court specifically did not entertain argument from counsel. Therefore, we conclude the district court did not violate *Gebbers v. State*, 118 Nev. 500, 50 P.3d 1092 (2002).