

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROGER WILLIAM HULL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72695

FILED

SEP 13 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Roger William Hull appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on January 6, 2017.¹ Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Hull filed his petition nearly 14 years after issuance of the remittitur on direct appeal on April 8, 2003.² *See Hull v. State*, Docket No. 37953 (Order of Affirmance, January 31, 2003). Thus, Hull's petition was untimely filed. *See* NRS 34.726(1). Moreover, Hull's petition was successive

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

²Hull filed the instant petition more than eight years after entry of the amended judgment of conviction on December 18, 2008. Therefore, the amended judgment would not provide good cause because he did not timely file this petition from the date of the amended judgment and the claims raised in Hull's petition do not relate to the amendments to the judgment of conviction. *See Sullivan v. State*, 120 Nev. 537, 540-42, 96 P.3d 761, 763-65 (2004).

because he had previously filed three 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.³ See NRS 34.810(1)(b)(2); NRS 34.810(2). Hull's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

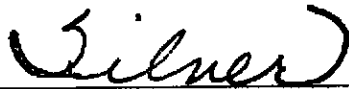
In an attempt to demonstrate good cause, Hull claimed he only recently learned his convictions were redundant and previous trial and postconviction counsel were ineffective for failing to raise this claim earlier. Hull fails to demonstrate good cause. This claim was available to be raised in a timely filed petition and Hull failed to demonstrate an impediment external to the defense prevented him from raising this claim. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988); *Brown v. McDaniel*, 130 Nev. ___, ___. 331 P.3d 867, 871-72 (2014). Therefore, the district court did not err by denying these good cause claims.


Hull also claims on appeal it would be a fundamental miscarriage of justice if his petition was not heard on the merits and the one-year time bar only applies to challenges to the conviction and not to the sentence. Hull did not raise these claims in his petition below and we decline to consider them for the first time on appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we conclude

³*Hull v. State*, Docket No. 62954 (Order of Affirmance, October 16, 2013); *Hull v. State*, Docket No. 50840 (Order of Affirmance, May 15, 2008); *Hull v. Sate*, Docket No. 44376 (Order of Affirmance, September 14, 2005).

the district court did not err by denying Hull's petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Chief Judge, Second Judicial District
Second Judicial District Court, Department 1
Roger William Hull
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk