


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERICK MARQUIS BROWN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72339

FILED

SEP 13 2017

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

ORDER OF AFFIRMANCE

Erick Marquis Brown appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Brown argues the district court erred in dismissing his petition as procedurally barred. Brown filed his petition on August 11, 2016, more than eight years after issuance of the remittitur on direct appeal on October 9, 2007. *Brown v. State*, Docket No. 47856 (Order of Affirmance, September 13, 2007). Thus, Brown's petition was untimely filed. See NRS 34.726(1). Moreover, Brown's petition was successive because he had previously filed several 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.<sup>2</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Brown's petition was procedurally barred absent a

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

<sup>2</sup>*Brown v. State*, Docket No. 64907 (Order of Affirmance, June 11, 2014); *Brown v. State*, Docket No. 60197 (Order of Affirmance, January 16, 2013).

demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Brown argues the district court erred in applying the procedural bars to his petition. Brown appeared to assert the procedural bars did not apply to his petition because he did not file a postconviction petition for a writ of habeas corpus and he may challenge the validity of the Nevada Revised Statutes in any kind of action or proceeding.

Brown filed a petition entitled “an original action in proceeding for petition for writ of habeas corpus in accordance to the provisions allowed in *Bible v. Malone* decision.” The district court construed the petition as a postconviction petition and dismissed the petition as procedurally barred. A review of the record demonstrates Brown filed a petition challenging the validity of the commission that helped to create the Nevada Revised Statutes and, for that reason, Brown argued the Nevada Revised Statutes were invalid. Brown also asserted his conviction was invalid because it was based upon the improperly enacted Nevada Revised Statutes. Given the nature of Brown’s claims, we conclude the district court properly construed Brown’s petition to be a postconviction petition for a writ of habeas corpus and properly applied the procedural bars contained in NRS Chapter 34. *See* NRS 34.724(2)(b) (stating a postconviction petition for a writ of habeas corpus is the exclusive postconviction remedy for challenging a judgment of conviction); *see also State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory.”).


Moreover, Brown’s claims were reasonably available to be raised in a timely petition and Brown did not demonstrate an impediment external to the defense prevented him from doing so. *See Hathaway v.*


*State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, the district court properly dismissed the petition as procedurally barred.

Next, Brown argues the district court erred in dismissing the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations not belied by the record, and if true, would entitle him to relief. *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 claims that are procedurally barred when the petitioner cannot overcome the procedural bars). The district court concluded Brown's claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper.

Finally, Brown appears to argue the district court's order dismissing his petition fails to contain specific findings as required by NRS 34.830(1). However, we conclude the district court's order contains findings with sufficient specificity to permit this court to appropriately review its decision on appeal. Therefore, we conclude Brown fails to demonstrate he is entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Elissa F. Cadish, District Judge  
Erick Marquis Brown  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk