

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AVERY ALLEN CHURCH, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72408

FILED

DEC 14 2017

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

ORDER OF AFFIRMANCE

Avery Allen Church, Jr. appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on November 4, 2016.¹ Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Church filed his petition more than seven years after issuance of the remittitur on direct appeal on March 3, 2009. *See Church v. State*, Docket No. 48741 (Order of Affirmance, February 3, 2009). Thus, his petition was untimely filed. *See* NRS 34.726(1). Moreover, Church's petition constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.² *See* NRS 34.810(2). Church'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).

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

²*See Church v. State*, Docket No. 68614 (Order of Affirmance, December 29, 2015); *Church v. State*, Docket No. 56402 (Order of Affirmance, October 5, 2011).

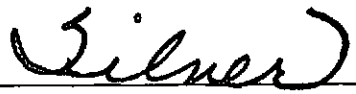
In his petition, Church alleged he had good cause to overcome the procedural bars because he received ineffective assistance of postconviction counsel. This claim of good cause was previously raised and rejected by this court in Church's previous postconviction petition, *see Church v. State*, Docket No. 68614 (Order of Affirmance, December 29, 2015), and therefore, this claim was barred by the doctrine of law of the case, *see Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Therefore, we conclude the district court did not err by denying the petition as procedurally barred.

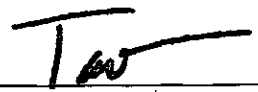
The district court also construed Church's petition as a motion to modify or correct an illegal sentence based on the nature of the claims raised in the petition. Church claimed the district court relied on mistaken assumptions regarding his criminal history that worked to his extreme detriment. Specifically, he claimed the State failed to produce certified copies of his prior convictions at sentencing. Further, he claimed, to the extent the State provided the court with copies of the prior convictions, the district court failed to make findings regarding whether the convictions were certified or not. The district court denied these claims because Church failed to demonstrate the district court relied on mistaken assumptions about Church's criminal history that worked to his extreme detriment. Substantial evidence supports the decision of the district court, *see Edwards v. State*, 112 Nev. 704, 708; 918 P.2d 321, 324 (1996), and we conclude the district court did not err by denying this claim.

On appeal, Church raises different challenges to his prior convictions that were not raised in his petition below. Because these claims were not raised below, 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

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jennifer P. Togliatti, District Judge
Avery Allen Church, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk