IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEBRA LYNN CLENDENNING,
Appellant,
vs.
JO GENTRY, WARDEN,
Respondent.

No. 72265

ORDER OF AFFIRMANCE

Debra Lynn Clendenning appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 25, 2016, and supplemental petition filed on July 14, 2016. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Clendenning contends the district court erred in denying her claims that counsel was ineffective for not requesting a diversion hearing pursuant to NRS 458A.220, the district court erred in not sua sponte holding such a hearing, and her sentence constituted cruel and unusual punishment because she was not given the opportunity to participate in a gambling diversion program. Clendenning did not raise any claims regarding NRS chapter 458A below,[1] and we decline to consider them on

[1]Clendenning's claim that she preserved the issue below by arguing counsel was ineffective for failing "to advise or explain any post-conviction options" is unavailing. Diversion is not a postconviction option. *Compare* NRS 176.105(1) (providing a judgment of conviction is filed only after a defendant is found guilty and sentenced), *with* NRS 458A.220(2)

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appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Clendenning appears to argue she has good cause to raise these issues on appeal because her initial postconviction counsel was ineffective in not briefing these issues below. However, the alleged ineffective assistance of postconviction counsel cannot be good cause where, as here, the appointment of counsel was not statutorily or constitutionally required. *See Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014).

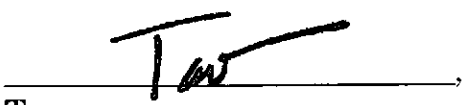
Clendenning next contends her sentence constituted cruel and unusual punishment and she was denied her right to an impartial tribunal because of bias, or the appearance or likelihood thereof, which pervaded the proceedings. Claims that could be raised on direct appeal must be raised in a direct appeal or they are considered waived. *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999). Clendenning's claims could have been raised in a direct appeal and are thus waived. *See id.* ("[C]laims that are appropriate for a direct appeal [include] a challenge to the sentence imposed . . . and a claim that the district court entertained an actual bias or that there were other conditions that rendered the proceedings unfair.").

(postponing sentencing for defendants who enter into the diversion program). And even if it were, Clendenning's claim was bare and thus preserved nothing. *See Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (bare claims unsupported by specific factual allegations do not entitle petitioners to relief).

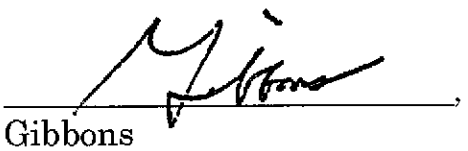
For the foregoing reasons, we conclude the district court did not err in denying Clendenning's petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Thomas L. Stockard, District Judge
Law Office of Justin Patrick Stovall
Attorney General/Carson City
Churchill County District Attorney/Fallon
Kolesar & Leatham, Chtd.
Churchill County Clerk