


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN RANDALL QUINTERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72885

FILED

FEB 13 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

John Randall Quintero appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Quintero filed his petition on January 13, 2017, more than nine years after issuance of the remittitur on direct appeal on August 14, 2007. *Quintero v. State*, Docket No. 48505 (Order of Affirmance, July 17, 2007). Thus, Quintero's petition was untimely filed. *See* NRS 34.726(1). Moreover, Quintero's petition was successive because he had previously filed two 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

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

his previous petitions.² See NRS 34.810(2). Quintero's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).


In his petition, Quintero asserted he was improperly denied the opportunity to rebut allegations and correct errors contained within the presentence sentence investigation report (PSI). Quintero asserted he had good cause to raise this claim because he did not realize the PSI would be utilized when the Parole Board considered him for parole. The district court concluded Quintero's claim was reasonably available to be raised in a timely petition, and therefore, Quintero failed to demonstrate good cause. See *Hathaway v. State*, 119 Nev. 248, 71 P.3d 503 (2003); *Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. 243, 250, 255 P.3d 209, 214 (2011). After a review of the record, we conclude the district court properly dismissed the petition as procedurally barred.


In his informal brief, Quintero asserts the Parole Board and the Nevada Department of Corrections improperly refuse to provide him with the reports the Board considered when it denied parole. However, Quintero did not raise this issue before the district court and we decline to consider it in the first instance. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Moreover, had Quintero raised this issue in his petition,

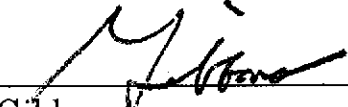
²*Quintero v. Warden*, Docket No. 68565 (Order of Affirmance, March 16, 2016); *Quintero v. State*, Docket No. 55279 (Order of Affirmance, June 8, 2011).

he would not be entitled to relief because this claim is not within the scope of a postconviction petition for a writ of habeas corpus. See NRS 34.720; NRS 34.724(1). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Lynne K. Simons, District Judge
John Randall Quintero
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

³We have considered Quintero's December 22, 2017, motion to expand record, conclude no relief is warranted, and deny the motion.