

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOUGLAS HARRY WARENBACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73381

FILED

FEB 13 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Douglas Harry Warenback appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Warenback filed his petition on March 21, 2017, more than three years after entry of the judgment of conviction on December 17, 2013. Thus, Warenback's petition was untimely filed. *See* NRS 34.726(1). Moreover, Warenback'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.² *See* NRS 34.810(2). Warenback's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

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

²*Warenback v. State*, Docket No. 72280 (Order of Affirmance, July 12, 2017); *Warenback v. State*, Docket No. 71056 (Order of Affirmance, March 23, 2017); *Warenback v. State*, 69536 (Order of Affirmance, May 18, 2016); *Warenback v. State*, Docket No. 66294 (Order of Affirmance, April 14, 2015).

Warenback claimed he had good cause because he recently discovered the victim in this matter was the subject of juvenile court proceedings and information from those proceedings may have impacted his criminal matter. Warenback's initial trial-level counsel filed a motion to withdraw due to a conflict in the district court on December 3, 2012. The motion listed the juvenile court case number, asserted the conflict arose because the public defender's office represented the victim in that matter, and requested the appointment of substitute counsel for Warenback. The district court granted the motion and appointed substitute counsel.

Warenback's good-cause claim is based upon information contained in his case file and available since 2012. Warenback's failure to realize the significance of the juvenile court proceedings did not constitute an impediment external to the defense that prevented him from raising claims utilizing that information in a timely petition. *See Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014). Therefore, the district court properly denied the petition as procedurally barred.

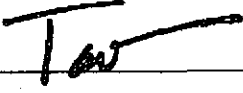
Next, Warenback argues the district court erred in referring him to the Nevada Department of Corrections (NDOC) for the forfeiture of credits. The State moved for an order referring Warenback to the NDOC for forfeiture of credits and Warenback opposed the motion. The district court found Warenback has filed 30 motions or petitions, including the instant petition, in the district court since 2014, those petitions or motions were "meritless, barred, and frivolous," and Warenback filed the documents in bad faith.

NRS 209.451(1)(d)(1) permits the forfeiture of an offender's credits if the offender filed documents in court "for the purpose of harassing the offender's opponent, causing unnecessary delay in the litigation or

increasing the cost of the litigation.” The Nevada Supreme Court has noted referral to the NDOC for the forfeiture of credits is an available sanction when an inmate litigant has submitted abusive court filings. *See Jones v. Eighth Judicial Dist. Court*, 130 Nev. 493, 500, 330 P.3d 475, 480 (2014). Given the district court’s findings regarding Warenback’s petitions and motions, as well as the record before this court, we conclude the district court did not err in referring Warenback to the NDOC for the forfeiture of credits. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Douglas Harry Warenback
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We grant Warenback’s motion requesting we consider the petition and supplements he filed in Docket No. 73383, and have considered those documents in our disposition of this matter. We deny any other relief sought in that motion and deny Warenback’s motion requesting leave to file a second informal brief.