

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TOLLIVER G. ARMSTRONG,
Appellant,
vs.
ISIDRO BACA,
Respondent.

No. 74393

FILED

JUN 13 2018

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

ORDER OF AFFIRMANCE

Tolliver G. Armstrong appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus challenging the computation of time served, filed on October 2, 2017.¹ First Judicial District Court, Carson City; James Todd Russell, Judge.

The district court concluded Armstrong's petition was an abuse of the writ because it raised claims identical to those raised in his May 16, 2017, postconviction petition for a writ of habeas corpus. Armstrong's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.810(2), (3). Armstrong can demonstrate neither.


Armstrong contends he has good cause to reraise the issue because it was not clear that his prior petition was raising the issue in the first place. We disagree. In finding that Armstrong's earlier petition raised the same claim as the instant petition, the district court acknowledged that the issue was clearly raised in the prior petition. And the record on appeal


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

substantially supports the district court's finding. Further, Armstrong cannot demonstrate actual prejudice because this court vacated the district court's denial of Armstrong's May petition and ordered it to reconsider the claim in light of a recent, dispositive Nevada Supreme Court decision. See *Armstrong v. Warden*, Docket No. 73401 (Order Vacating Judgment and Remanding, April 25, 2018). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
Tolliver G. Armstrong
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk