

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KIRK DOUGLAS WINGO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74905

FILED

SEP 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Kirk Douglas Wingo appeals from an order of the district court denying a motion to withdraw guilty plea filed on September 11, 2017, and a postconviction petition for a writ of habeas corpus filed on October 13, 2017.¹ Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Wingo filed his motion and petition more than six years after issuance of the remittitur on direct appeal on February 7, 2011.² *Wingo v. State*, Docket No. 56179 (Order of Affirmance, January 13, 2011). Thus, they were untimely filed. See NRS 34.726(1). Moreover, Wingo's motion and petition were successive because he had previously filed a postconviction petition for a writ of habeas corpus, and they 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).


²The district court properly construed Wingo's motion to withdraw guilty plea to be a postconviction petition for a writ of habeas corpus. See *Harris v. State*, 130 Nev. 435, 448-449, 329 P.3d 619, 628 (2014).


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

Wingo claimed he had good cause to overcome the procedural bars because he lacked the legal knowledge to file a motion to withdraw or a postconviction petition. This claim lacked merit. Wingo previously filed a timely postconviction petition for a writ of habeas corpus, with the help of counsel, and the claims raised in the instant motion and petition are substantially similar to the claims raised in his previous petition. To the extent Wingo's claims differ from those previously raised, Wingo's claim of lack of legal knowledge does not excuse the untimely, successive, and abusive motion and petition. Cf. *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303 (1988) (holding petitioner's claim of organic brain damage, borderline mental retardation, and reliance on assistance of an inmate law clerk unschooled in the law did not constitute good cause for filing a successive postconviction petition). Therefore, the district court did not err by denying the motion and petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

³*Wingo v. State*, Docket No. 60794 (Order of Affirmance, April 10, 2013).

cc: Hon. Lynne K. Simons, District Judge
Kirk Douglas Wingo
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk