

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY LEE MONROE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73737

**FILED**

OCT 16 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Anthony Lee Monroe appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Monroe argues the district court erred by denying his June 19, 2014, petition. Monroe's petition was successive because he had previously filed a postconviction petition 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 petition.<sup>1</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Monroe's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.810(1)(b); NRS 34.810(3). "Application of the statutory procedural default rules to postconviction habeas petitions is mandatory." *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). "We give deference to the district court's factual findings regarding good cause, but we will review the court's application of

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<sup>1</sup>*Monroe v. State*, Docket No. 63576 (Order of Affirmance, January 16, 2014).

the law to those facts de novo.” *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012).

Monroe did not claim he had good cause to overcome the procedural bars and the State moved to dismiss the petition as procedurally barred. The district court denied the motion, concluding the procedural bars did not apply because Monroe’s previous petition raised a claim concerning his presentence credits, and such a claim challenged the computation of time served rather than his judgment of conviction. However, the Nevada Supreme Court has specifically stated that a petitioner’s claim seeking additional presentence credits is a challenge to the judgment of conviction and not a challenge to the computation of time served. *Griffin v. State*, 122 Nev. 737, 739, 137 P.3d 1165, 1166 (2006). Thus, Monroe’s previous postconviction petition for a writ of habeas corpus challenged his judgment of conviction and the district court should have applied the procedural bars to his June 19, 2014, petition. Because Monroe’s petition was successive and an abuse of the writ, and he did not attempt to demonstrate good cause, the district court should have denied relief due to application of the procedural bars.

Next, the district court concluded Monroe’s underlying claim lacked merit and Monroe argues the district court erred in reaching that conclusion. To determine if Monroe can establish actual prejudice sufficient to overcome the procedural bars, we consider his underlying claims to ascertain whether his claim of error “worked to his actual and substantial disadvantage, in affecting the state proceeding with error of constitutional dimensions.” *Hogan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993). For the reasons discussed below, we conclude the district court properly concluded Monroe’s underlying claim lacked merit, and therefore the

district court should have also concluded he did not establish actual prejudice sufficient to overcome the procedural bars. See NRS 34.810(3).


Monroe's underlying claim involved the ineffective assistance of counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).


Monroe claimed his trial counsel was ineffective for failing to investigate and obtain surveillance video depicting him entering the store where he was alleged to have committed robbery. Monroe asserted the surveillance video would have shown he already had the item he was later accused of stealing in his possession when he entered the store. At the evidentiary hearing, counsel testified that he did not believe the surveillance video to be as favorable to the defense as Monroe considered it to be. Counsel testified the defense strategy did not rely upon surveillance video, but rather focused on demonstrating Monroe did not commit robbery because the store worker initiated the use of force. The district court

concluded counsel's decision to focus on Monroe's lack of use of force amounted to a tactical decision, and such decisions "are virtually unchallengeable absent extraordinary circumstances," *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989), which Monroe did not demonstrate. The district court further found that Monroe's testimony at the evidentiary hearing concerning the incident not to be credible. The district court's findings are supported by substantial evidence, and we conclude Monroe fails to demonstrate the district court erred by denying this claim.

Because Monroe's underlying claim would not have entitled him to relief, he failed to demonstrate actual prejudice sufficient to overcome the procedural bars. *See* NRS 34.810(3). Because Monroe did not demonstrate good cause and actual prejudice sufficient to overcome the procedural bars, the district court should have denied the petition based upon the mandatory application of the procedural bars. *See Riker*, 121 Nev. at 231, 112 P.3d at 1074. Nevertheless, the district court reached the correct result in denying relief and we therefore affirm the district court's order. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Lynne K. Simons, District Judge  
Law Offices of Lyn E. Beggs, PLLC  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk