

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LARRY EUGENE SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73719

FILED

AUG 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Larry Eugene Smith appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 29, 2017.¹ Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Smith filed his petition nine years after issuance of the remittitur on direct appeal on May 6, 2008. *See Smith v. State*, Docket No. 49634 (Order of Affirmance, April 10, 2008). Smith's petition was therefore untimely filed. *See* NRS 34.726(1). Smith's petition was also successive and an abuse of the writ.² NRS 34.810(2). Smith's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Smith first claimed his petition was not procedurally barred because it was merely a supplement to his 2008 petition. In 2014, the Nevada Supreme Court affirmed the order of the district court denying the 2008 petition. *See Smith v. State*, Docket No. 61659 (Order of Affirmance,

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


²*See Smith v. State*, Docket No. 61659 (Order of Affirmance, January 16, 2014).

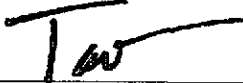
January 16, 2014). As that petition was finally disposed of nearly three years prior to the filing of the instant pleading, there was nothing for Smith to “supplement.”

Smith also claimed he did not have to demonstrate good cause because at least one of his underlying claims alleged structural error. Smith is mistaken. This court cannot reach Smith’s underlying claim—even if it is of structural error—unless he first overcomes the procedural bars. See *State v. Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory.”).

To the extent Smith claimed he had good cause to reraise several claims here because he needed to federalize them, he failed to overcome the procedural defects to his petition. Federalization of claims is not an impediment external to the defense. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Finally, Smith failed to demonstrate any fundamental miscarriage of justice to overcome these procedural bars. See *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). We therefore conclude that the district court did not err by denying Smith’s petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Scott N. Freeman, District Judge
Larry Eugene Smith
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk