

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RONALD ROSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74094

FILED

JUL 17 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Ronald Ross appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 14, 2017.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Ross' petition was untimely because it was filed more than six years after the remittitur on direct appeal was issued on January 2, 2011,² and it was successive because his previous postconviction petition for a writ of habeas corpus was denied on the merits.³ See NRS 34.726(1); NRS 34.810(2). Consequently, Smith's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically pleaded laches,

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).


²*Ross v. State*, Docket No. 53882 (Order of Affirmance, December 10, 2010).

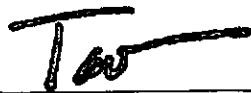
³*Ross v. State*, Docket No. 60171 (Order of Affirmance, January 16, 2013).

Smith was required to overcome the rebuttable presumption of prejudice to the State. See NRS 3.800(2).

Ross claimed he “[could] establish cause to overcome any procedural bars based on the ineffective assistance of post-conviction counsel.” However, because Ross did not have a constitutional or statutory right to postconviction counsel, ineffective assistance of postconviction counsel did not provide good cause to excuse the procedural bars to his petition. See *Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014). Accordingly, we conclude the district court did not err by denying Ross’ procedurally barred habeas petition, see *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to postconviction habeas petitions is mandatory.”), and we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

⁴We also conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. See NRS 34.750(1); *Renteria-Nova v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).

cc: Hon. Douglas W. Herndon, District Judge
Ronald Ross
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk