

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN ELVIN TURNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75894-COA

FILED

FEB 13 2019

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

ORDER OF AFFIRMANCE

John Elvin Turner appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 10, 2018.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Turner filed his petition more than one year after entry of the judgment of conviction on September 12, 2016. Thus, Turner's petition was not timely filed.² See NRS 34.726(1). Moreover, Turner's petition was successive because he had previously filed a postconviction petition for a

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

²Turner's direct appeal from his judgment of conviction was dismissed for lack of jurisdiction because the notice of appeal was not timely filed. See *Turner v. State*, Docket No. 71616 (Order Dismissing Appeal, April 11, 2017). Thus, the proper date to measure timeliness is the entry of the judgment of conviction. See *Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

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.³ See NRS 34.810(2). Turner's petition was procedurally barred absent a demonstration of good cause and actual prejudice.⁴ See NRS 34.726(1); NRS 34.810(3).

In his petition, Turner argued he had good cause to raise his claims again, and to raise new claims, because he needed to exhaust his claims for federal habeas purposes. Exhaustion of state remedies in order to seek federal court review is insufficient to demonstrate good cause. See *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

Turner also appeared to argue he had good cause to raise his *Miranda*⁵ and bail claims again because the district court improperly denied them in his first petition. Turner could have raised this argument on appeal from the denial of his first petition and, therefore, failed to demonstrate

³*Turner v. State*, Docket No. 72602 (Order of Affirmance; November 14, 2017).


⁴The district court erred by failing to apply the procedural bars in this case. See *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 231, 112 P.3d 1070, 1074 (2005) (application of procedural bars are mandatory). Nevertheless, we affirm the denial of the petition for the reasons stated above. See *Wyatt v. State*, 86 Nev. 294, 298; 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

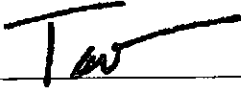
⁵*Miranda v. Arizona*, 384 U.S. 436 (1966).


good cause for raising these claims again in his current petition. *Cf. Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).

Having concluded Turner's petition was procedurally barred and he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

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

⁶We have reviewed all documents Turner has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Turner has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance. We also conclude the district court did not err by denying Turner's requests for transcripts.