

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY ROSS BLACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75023-COA

FILED

FEB 14 2019

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

ORDER OF AFFIRMANCE

Anthony Ross Black appeals from an order of the district court denying a "Proper person supplemental petition for a writ of habeas corpus (post-conviction)" filed on November 8, 2017.¹ Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Black claims the district court erred by denying his petition as procedurally barred. Black filed his petition more than 17 years after issuance of the remittitur on direct appeal on June 20, 2000. *See Black v. State*, Docket No. 33753 (Order Dismissing Appeal, May 25, 2000). Thus, Black's petition was untimely filed. *See* NRS 34.726(1). Moreover, Black's petition was successive because he had previously filed four postconviction petitions 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.² *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Black's petition was

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

²*See Black v. State*, Docket No. 70918-COA (Order of Affirmance, May 16, 2017); *Black v. State*, Docket No. 66882-COA (Order of Affirmance, February 17, 2016); *Black v. State*, Docket No. 44472 (Order of Affirmance,

procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

First, Black claimed he had good cause to overcome the procedural bars because the order denying his first, timely petition was not properly entered. Specifically, he claimed the district court did not dispose of a claim raised in ground 4 of his supplemental petition and, therefore, the order was not a final order and his first petition remains pending. This claim lacked merit. The district court disposed of all of Black's claims raised in his first petition and two supplements, and specifically disposed of all claims raised in ground 4. Therefore, this claim did not provide good cause to overcome the procedural bars. Accordingly, the district court did not err by denying this claim.

Second, Black claimed he had good cause because the district court erred by appointing a specific attorney to represent him during his first postconviction proceedings. Black failed to demonstrate good cause to overcome the procedural bars because the appointment of postconviction counsel was discretionary, see NRS 34.750(1), and a defendant is not entitled to the appointment of counsel of his choice, see *United States v. Gonzalez-Lopez*, 548 U.S. 140, 151 (2006). Therefore, the district court did not err by denying this claim.

Third, Black claimed he had good cause to overcome the procedural bars because postconviction counsel was ineffective. Black previously raised this good cause claim in prior petitions, and it was rejected by this court. See *Black v. State*, Docket No. 70918-COA (Order of Affirmance, May 16, 2017); *Black v. State*, Docket No. 66882-COA (Order of

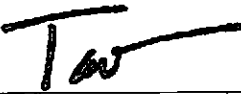
April 27, 2005); *Black v. State*, Docket No. 38780 (Order of Affirmance, May 7, 2003).

Affirmance, February 17, 2016). Therefore, this claim was barred by the doctrine of law of the case. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Accordingly, the district court did not err by denying this claim.

Finally, Black claims on appeal the district court erred by also denying his petition based on the fact he did not substantially comply with NRS 34.735. Black claims the district court should have given him the opportunity to correct any defects.

Black's petition did not substantially comply with NRS 34.735. However, the omissions were curable defects and the district court could have allowed Black to amend the petition to cure these defects. *See Miles v. State*, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004). Nevertheless, because Black failed to demonstrate good cause to overcome the procedural bars, we conclude the district court did not err by denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Tao


_____, J.
Gibbons

³We have reviewed all documents Black has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Black 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. Further, we deny Black's request for the appointment of counsel.

The Honorable Michael L. Douglas did not participate in the decision in this matter.

cc: Hon. Susan Johnson, District Judge
Anthony Ross Black
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk