

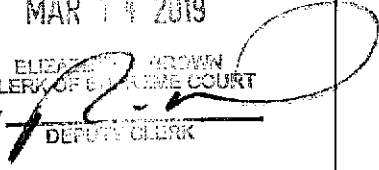
IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH KAY CARLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75774

FILED

MAR 14 2019

ELIZABETH WATSON
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying appellant's postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.¹

Appellant filed her petition on December 5, 2017, more than one year after remittitur issued from the decision affirming her judgment of conviction. *Carley v. State*, Docket No. 66034 (Order of Affirmance, January 15, 2015). The petition was therefore untimely filed. *See* NRS 34.726(1). Moreover, because appellant had previously sought postconviction relief,² it was successive to the extent that it raised the same claims, and constituted an abuse of the writ to the extent that it raised claims that could have been raised earlier. *See* NRS 34.810(2). Accordingly, the petition was subject to dismissal absent a demonstration of good cause and prejudice. *See* NRS 34.810(2), (3).

¹Having considered the pro se brief filed by appellant, we conclude that a response is not necessary. NRAP 46A(c). This appeal therefore has been submitted for decision based on the pro se brief and the record. *See* NRAP 34(f)(3).

²*Carley v. State*, Docket No. 68503 (Order of Affirmance, Ct. App., December 18, 2015).

Appellant claims she demonstrated good cause and prejudice because she filed her petition within a reasonable time after learning of the legal basis for a new claim. *See Clem v. State*, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (“To establish good cause, appellants must show that an impediment external to the defense prevented their compliance with the applicable procedural rules . . . [such as] where the factual or legal basis for a claim was not reasonably available at the time of any default.”). Specifically, she argues that she pleaded guilty pursuant to an agreement that was contingent upon it being accepted by her and her codefendant, and although her codefendant accepted the agreement, he received postconviction relief and is no longer subject to its terms. She claims the agreement is thus invalid as to her. As the district court recognized, there is no merit to appellant’s contention and she failed to demonstrate good cause and prejudice. Accordingly, we conclude that the district court did not err by denying this claim without conducting an evidentiary hearing, *see Hathaway v. State*, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003) (recognizing that a petitioner is entitled to an evidentiary hearing if she raises a claim supported by specific facts that are not belied by the record and that, if true, would entitle her to relief), and we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

Silver, J.
Silver

cc: Hon. Douglas Smith, District Judge
Elizabeth Kay Carley
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk