

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN NUNLEY A/K/A JOHN JOE
NUNLEY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75617-COA

FILED

MAR 14 2019

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

ORDER OF AFFIRMANCE

John Nunley appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 12, 2018.¹ Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Nunley contends the district court erred by dismissing his new claims of ineffective assistance of appellate counsel without first conducting an evidentiary hearing. Nunley's claims could have been raised in any of his prior postconviction petitions for a writ of habeas corpus. *See Nunley v. State*, Docket No. 76730 (Order Dismissing Appeal, January 18, 2019); *Nunley v. State*, Docket No. 74844-COA (Order of Affirmance, December 4,

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

2018).² Nunley's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.810(1)(b).

Nunley claimed he had good cause because the district court did not allow him to amend his October 17, 2017, petition to add claims of ineffective assistance of appellate counsel. Nunley's good-cause claim is itself procedurally barred because Nunley could have raised it in his appeal from the denial of that petition, see NRS 34.810(1)(b)(3), and as such, it cannot constitute good cause. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (holding a claim of good cause cannot itself be procedurally barred). Further, Nunley's good-cause claim failed to explain why he did not raise the ineffective-assistance claims in his prior petitions. Nunley was not entitled to amend his prior petition. See NRS 34.750(5) ("No further pleadings may be filed except as ordered by the court.").

Nunley also could not have demonstrated actual prejudice. Nunley argued his appellate counsel was ineffective for failing to raise claims concerning Nunley's assertion that he is a sovereign citizen and he did not consent to be subject to the jurisdiction of Nevada state courts. Nunley's underlying claims did not demonstrate Nevada courts lacked jurisdiction concerning this matter, see Nev. Const. art. 6, § 6; NRS 171.010, and Nunley's claims would thus not have succeeded on appeal. We therefore conclude the district court did not err by denying Nunley's petition as

²These cases addressed postconviction petitions for a writ of habeas corpus filed on March 7, 2017, and October 17, 2017, respectively. Nunley also filed a postconviction petition for a writ of habeas corpus on October 11, 2017, which appears to still be pending in the district court.

procedurally barred without first conducting an evidentiary hearing. *See Hathaway*, 119 Nev. at 252-53, 71 P.3d at 506 (holding an evidentiary hearing is warranted on a good-cause claim if it is supported by specific facts that, if true and not belied by the record, would have entitled petitioner to relief).

Nunley also contends he was prejudiced by the district court's failure to provide him adequate time to reply to the State's response. The State sought to dismiss Nunley's petition as procedurally barred, so Nunley was entitled to respond within 15 days. *See* NRS 34.750(4). We therefore conclude the district court erred by dismissing Nunley's petition before that time had run. We nevertheless affirm the district court's denial because Nunley's timely response³ simply reargued the good-cause claims in his petition, and as discussed above, those claims lacked merit. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

Nunley also contends the State's opposition was fraudulently used for the findings of fact and conclusions of law and order denying his petition, which itself is not consistent with the hearing transcript. Nunley's bare claim does not indicate why the order was fraudulent or in what way it was inconsistent with any transcript. We therefore conclude he is not entitled to relief on these claims. Finally, to the extent there was any error

³Nunley's response was received within the 15-day time period, but the district court clerk did not file it until a week later.

in the captioning of Nunley's case, he has failed to demonstrate any relief is warranted. See NRS 178.598. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴



_____, J.
Tao



_____, J.
Gibbons



_____, J.
Bulla

cc: Hon. Susan Johnson, District Judge
John Nunley
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We have reviewed all documents Nunley has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Nunley has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we decline to consider them in the first instance.