

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH NAPOLEAN WARREN, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76153-COA

FILED

MAR 20 2019

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

ORDER OF AFFIRMANCE

Joseph Napoleon Warren, III, appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on November 21, 2017.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Warren's petition was untimely because it was filed more than 26 years after the remittitur on direct appeal was issued on May 21, 1991.² See NRS 34.726(1). It was successive because Warren had previously filed several postconviction petitions for a writ of habeas corpus and the grounds for this petition could have been raised in those petitions.³ See NRS 34.810(1)(b)(2). And it constituted an abuse of the writ because Warren

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

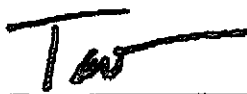
²See *McCurdy v. State*, 107 Nev. 275, 809 P.2d 1265 (1991) (*McCurdy* was Warren's codefendant and their appeals were consolidated).

³See *Warren v. State*, Docket No. 52247 (Order of Affirmance, May 6, 2009); *Warren v. State*, Docket No. 28281 (Order Dismissing Appeal, October 2, 1998). Warren did not appeal from the district court order denying the petition he filed on April 22, 1992.

raised grounds that were new and different from those raised in his previous petitions. See NRS 34.810(2). Consequently, Warren's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3); *State v. Williams*, 120 Nev. 473, 476-77, 93 P.3d 1258, 1260 (2004).

Warren's only attempt to show good cause was his claim of "newly acquired knowledge" about the requirement for a separate penalty hearing after a jury has rendered a guilty verdict in a first-degree murder trial. See NRS 175.552(1). However, Warren failed to demonstrate that an impediment external to the defense prevented him from complying with the procedural default rules, see *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003), and show that errors in the proceedings underlying his judgment worked to his actual and substantial disadvantage, see *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012). We conclude the district court did not err by denying Warren's procedurally-barred postconviction habeas petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Joseph Napoleon Warren, III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk