

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERRY SANTISTEVAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76729-COA

FILED

APR 05 2019

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

ORDER OF AFFIRMANCE

Jerry Santistevan appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Santistevan filed his petition on May 2, 2018, more than three years after entry of the judgment of conviction on March 19, 2015.² Thus, Santistevan's petition was untimely filed. See NRS 34.726(1). Moreover, Santistevan's petition was successive because he had previously filed a postconviction petition 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

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

²Santistevan did not pursue a direct appeal.

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

First, Santistevan asserted he had good cause to overcome the procedural bars because his trial-level counsel was ineffective for failing to inform him that his codefendant accepted responsibility for use of the firearm and for failing to argue his sentence violated his rights against double jeopardy. However, a procedurally barred claim of ineffective assistance of counsel cannot constitute cause for raising additional claims of ineffective assistance of counsel. See *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Second, Santistevan appeared to assert the procedural bars did not apply because he had to exhaust state remedies so that he can proceed in federal court. However, exhaustion of state remedies in order to seek federal court review was insufficient to demonstrate good cause. See *Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229 1230 (1989).

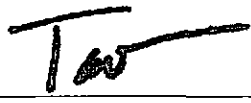
Next, Santistevan argues the district court erred by declining to consider his reply to the State's opposition to his petition. The district court has the discretion to allow a petitioner to file documents to supplement the initial petition, but the district court did not grant Santistevan permission to file any additional documents, see NRS 34.750(5); *State v. Powell*, 122 Nev. 751, 758, 138 P.3d 453, 458 (2006), and

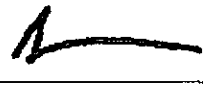
³Santistevan filed a postconviction petition for a writ of habeas corpus in the district court on February 23, 2016, but he did not appeal the denial of that petition.

Santistevan does not demonstrate the district court abused its discretion in this regard.

Having concluded Santistevan is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Stefany Miley, District Judge
Jerry Santistevan
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴The district court denied Santistevan's petition as procedurally barred and stated in its order that Santistevan did not allege he had good cause. However, a review of the record demonstrates Santistevan alleged he had good cause to overcome the procedural bars. However, as discussed previously, Santistevan's good-cause claims lacked merit and we therefore affirm. See *Wyatt v. State*, 86 Nev. 292, 298, 468 P.2d 338, 341 (1970).