

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH TORRES, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76416-COA

**FILED**

APR 18 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Joseph Torres, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Torres filed his petition on May 31, 2018, more than 14 years after entry of the judgment of conviction on April 1, 2004.<sup>2</sup> Thus, Torres' petition was untimely filed. *See* NRS 34.726(1). Moreover, Torres' petition was successive because he had previously filed two postconviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised several claims that were new and different from those raised in his

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

<sup>2</sup>Torres' direct appeal was dismissed for lack of jurisdiction because the notice of appeal was untimely filed. *Torres, Jr. v. State*, Docket No. 43362 (Order Dismissing Appeal, June 25, 2004). Accordingly, the proper date to measure timeliness is the entry of the judgment of conviction. *See Dickerson v. State*, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

previous petitions.<sup>3</sup> See NRS 34.810(1)(b)(2); NRS 34.810(2). Torres' petition was 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, Torres claimed he had good cause because the clerk of the district court failed to file and treat a letter he mailed in 2004 as if it were as notice of appeal. The Nevada Supreme Court has already considered and rejected this good-cause claim. *Torres v. State*, Docket No. 64902 (Order of Affirmance, March 11, 2015). The doctrine of the law of the case prevents further consideration of this claim and "cannot be avoided by a more detailed and precisely focused argument." *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, the district court properly denied this good-cause claim.

Second, Torres claimed he had good cause because he was in custody in Arizona for a 9-month period and lacked access to Nevada legal materials during that time. Torres also asserted he had good cause because he does not have physical access to the prison law library and has to rely upon a paging system for legal research. Torres failed to demonstrate lack of access to a law library deprived him of meaningful access to the courts. See *Lewis v. Casey*, 518 U.S. 343, 351 (1996) ("an inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is subpar in some theoretical sense"). Torres filed previous postconviction petitions for a writ of habeas corpus and additional documents in the district court, which indicated his access to the court was not improperly limited by restrictions on access to legal materials

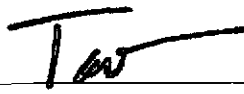
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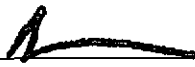
<sup>3</sup>*Torres v. State*, Docket No. 64902 (Order of Affirmance, March 11, 2015); *Torres, Jr. v. State*, Docket No. 48568 (Order of Affirmance, October 16, 2007).

or a prison law library. *See id.* (a prisoner must “demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim.”). Moreover, Torres did not demonstrate any of his claims could not have been raised in his prior petitions, and therefore, he failed to demonstrate official interference caused him to be unable to comply with the procedural bars. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Accordingly, we conclude the district court did not err by denying the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Jerome M. Polaha, District Judge  
Joseph Torres, Jr.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>4</sup>We have reviewed all documents Torres has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Torres 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.