

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEPHEN F.P. CIOLINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76835-COA

FILED

JUN 13 2019

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

ORDER OF AFFIRMANCE

Stephen F.P. Ciolino appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 18, 2018.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Ciolino filed his petition more than 13 years after entry of the judgment of conviction on January 31, 2005.² Thus, Ciolino's petition was untimely filed. See NRS 34.726(1). Moreover, Ciolino's petition was successive because he had previously filed several postconviction petitions 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 his previous petitions.³

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

²Ciolino did not appeal from his judgment of conviction.

³See *Ciolino v. State*, Docket No. 67940 (Order of Affirmance, December 18, 2015). Ciolino also filed petitions on November 20, 2009, and

See NRS 34.810(2). Ciolino's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3). Moreover, because the State specifically pleaded laches, Ciolino was required to overcome the rebuttable presumption of prejudice to the State. See NRS 34.800(2).

Ciolino argues the district court erred by denying his petition as procedurally barred because he demonstrated good cause to overcome the procedural bars. Specifically, he claims he demonstrated he suffers from a learning disability, dyslexia, and that under the Americans with Disabilities Act, he should have been given a reasonable accommodation to file this untimely, successive, and abusive writ.


Ciolino failed to demonstrate the district court erred. The majority of Ciolino's claims were previously raised in a petition filed in 2017, and Ciolino failed to demonstrate his learning disability provided good cause for raising them again in this petition. Further, to the extent Ciolino raised new claims in his petition, Ciolino failed to demonstrate his disability provided good cause. See *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding petitioner's claim of organic brain damage, borderline mental retardation, and reliance on assistance of inmate clerk unschooled in the law did not constitute good cause to overcome the procedural bars); see also *Hathaway v. State*, 119 Nev. 248,


May 17, 2017, but did not appeal their denials. Further, Ciolino filed a motion to withdraw guilty plea and the denial of that motion was affirmed on appeal. See *Ciolino v. State*, Docket No. 56813 (Order of Affirmance, April 11, 2012).

252, 71 P.3d 503, 506 (2003) (holding good cause must be an impediment external to the defense). Finally, Ciolino failed to overcome the presumption of prejudice to the State. Therefore, 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.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen E. Delaney, District Judge
Stephen F.P. Ciolino
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel, *see* NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017), or by denying the petition without first holding an evidentiary hearing, *see Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Further, we conclude the district court did not abuse its discretion by denying Ciolino's "motion for all 289 pages of a file stamped copy of petitioner's writ of habeas corpus dated 5-18-18."