

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JORGE MIRANDA-RIVAS,
Appellant,
vs.
HAROLD WICKMAN, WARDEN,
Respondent.

No. 76456-COA

FILED

JUL 09 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jorge Miranda-Rivas appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on November 27, 2017. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Miranda-Rivas' petition was untimely because it was filed more than three years after the remittitur on direct appeal was issued on November 12, 2014,¹ *see* NRS 34.726(1), and it was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits,² *see* NRS 34.810(2). Consequently, his petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

Miranda-Rivas claims he established good cause and prejudice by showing the State withheld impeachment evidence regarding witnesses Jorge Torres, Kevin Anguiano, and Escar Gonzalez in violation of *Brady v.*

¹*See Miranda-Rivas v. State*, Docket No. 64687 (Order of Affirmance, October 15, 2014).

²*See Miranda-Rivas v. Warden*, Docket No. 69855-COA (Order of Affirmance, July 26, 2016).

Maryland, 373 U.S. 83 (1963). “Good cause and prejudice [to excuse a procedural bar] parallel the second and third *Brady* components; in other words, proving that the State withheld the evidence generally establishes cause, and proving that the withheld evidence was material establishes prejudice.” *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003). However, Miranda-Rivas failed to demonstrate there was a reasonable probability that the trial result would have been different if this evidence had been disclosed to the jury. *See id.* at 600, 81 P.3d at 8 (defining material evidence). Consequently, he failed to demonstrate the prejudice necessary to overcome the procedural bars. *See id.* at 599, 81 P.3d at 8 (“To raise a [*Brady*] claim in an untimely and/or successive post-conviction habeas petition, the petitioner has the burden of pleading and proving specific facts that demonstrate good cause and prejudice to overcome the procedural bars.”).

Miranda-Rivas also claims he established good cause and prejudice by showing the district court erred by denying his request for postconviction counsel during his first postconviction habeas proceeding. However, Miranda-Rivas was not entitled to postconviction counsel and we have previously determined the district court did not err by denying his request for postconviction counsel. *See* NRS 34.750(1); *Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014); *Miranda-Rivas v. Warden* Docket No. 69855-COA (Order of Affirmance, July 26, 2016), at 7. Moreover, Miranda-Rivas did not explain how the denial of his previous request for postconviction counsel prevented him from filing the instant petition for more than two years. *See Hathaway v. State*, 119 Nev. 252-53, 71 P.3d 503, 506 (2003) (“[A]n adequate allegation of good cause would sufficiently explain why a petition was filed beyond the statutory time


period.”). Consequently, Miranda-Rivas failed to demonstrate good cause to overcome the procedural bars to his petition. See *Bennett*, 119 Nev. at 599, 81 P.3d at 8.

We conclude the district court did not err by dismissing Miranda-Rivas’ petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David A. Hardy, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk