

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICKIE LAMONT SLAUGHTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70676

FILED

APR 19 2017

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

ORDER OF AFFIRMANCE

Appellant Rickie Slaughter appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on February 12, 2016.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Slaughter filed his petition nearly two years after issuance of the remittitur on direct appeal on April 30, 2014. *See Slaughter v. State*; Docket No. 61991 (Order of Affirmance, March 12, 2014). Thus, Slaughter's petition was untimely filed. *See* NRS 34.726(1). Moreover, Slaughter'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 his previous petition.² *See* NRS 34.810(1)(b)(2); NRS 34.810(2). Slaughter's petition was procedurally barred absent a demonstration of

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

²*Slaughter v. State*, Docket No. 68532 (Order of Affirmance, July 13, 2016).

good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

First, Slaughter claimed he had good cause to overcome the procedural bars because counsel was not appointed during his previous postconviction proceeding. The appointment of counsel in this matter was not statutorily or constitutionally required. See *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 870 (2014); *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996); see also NRS 34.750(1). The state postconviction statutes do not permit the failure to appoint counsel for an initial petition in a non-capital case to provide good cause for a later petition. *Brown*, 130 Nev. at ___, 331 P.3d at 873. Thus, the failure to appoint postconviction counsel would not provide good cause for filing a late and successive petition.

Second, Slaughter claimed he had good cause because he is unlearned in the law. Slaughter's lack of legal knowledge did not constitute an impediment external to the defense that prevented him from complying with the procedural time bars. 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 law clerk unschooled in the law did not constitute good cause for the filing of a successive postconviction petition). Therefore, Slaughter's lack of legal knowledge did not provide good cause for filing a late and successive petition.

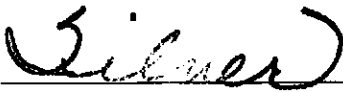
Third, Slaughter claimed he was actually innocent based on an email counsel received prior to trial from a firearms expert, counsel's failure to present exculpatory evidence known of at the time of trial, and the State's failure to present sufficient evidence Slaughter committed the crimes. Slaughter did not demonstrate actual innocence because he failed

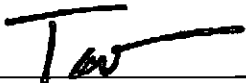
to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); see also *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Therefore, we conclude the district court did not err in denying Slaughter's claim of actual innocence without holding an evidentiary hearing. See *Berry v. State*, 131 Nev. ___, ___, 363 P.3d 1148, 1156 (2015).

Fourth, Slaughter requested genetic marker analysis be done on several pieces of evidence to test for touch DNA. We conclude the district court did not err by denying this request because Slaughter improperly included this claim within his postconviction petition rather than filing a separate petition on a form provided by the Nevada Department of Corrections as required by NRS 176.0918(2).

Having concluded Slaughter was not entitled to relief and, therefore, the district court did not err by denying the petition as procedurally barred, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

³We conclude the district court did not abuse its discretion by declining to conduct an evidentiary hearing or appoint postconviction counsel. See NRS 34.750(1); *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008).

cc: Hon. Douglas W. Herndon, District Judge
Rickie Lamont Slaughter
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk