

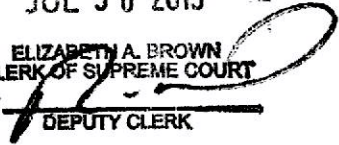
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN JOEY MARKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77113-COA

FILED

JUL 30 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

John Joey Marks appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David Barker, Senior Judge.

Marks filed his petition on April 13, 2018, more than two years after entry of the judgment of conviction on July 2, 2015.¹ Thus, Marks' petition was untimely filed. *See* NRS 34.726(1). Moreover, Marks' 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(2). Marks' petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

First, Marks claimed he had good cause because he has mental health difficulties and he was not able to obtain information related to his mental health problems during the prior postconviction proceedings.

¹Marks did not pursue a direct appeal.

²*Marks v. State*, Docket No. 70997-COA (Order of Affirmance, November 18, 2016).

However, information related to Marks' mental health was reasonably available to be included with his prior postconviction petition and Marks did not demonstrate an impediment external to the defense prevented him from doing so. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Moreover, Marks' mental health issues did not constitute an impediment external to the defense such that he had good cause for an untimely and successive petition. *See generally Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that 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).

Second, Marks claimed he had good cause because the district court denied his request for the appointment of postconviction counsel to help him with his prior petition. Because the appointment of postconviction counsel was discretionary in this matter, *see* NRS 34.750(1), Marks failed to demonstrate this claim provided good cause, *see Brown v. McDaniel*, 130 Nev. 571, 331 P.3d 867, 871 (2014) (stating "noncapital petitioners have no right to the effective assistance of counsel in post-conviction proceedings"). Therefore, we conclude the district court did not err by denying Marks' petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Hon. David Barker, Senior Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Attorney General/Las Vegas
Clark County District Attorney
Eighth District Court Clerk