

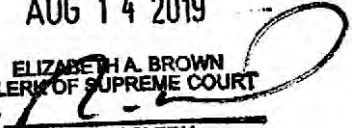
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW MIYASHIRO-AMER, A/K/A
MATTHEW IKEIKE
MIYASHIROAMER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77314-COA

FILED

AUG 14 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

MATTHEW MIYASHIRO-AMER, A/K/A
MATTHEW IKEIKE
MIYASHIROAMER,
Appellant,
vs.
THE STATE OF NEVADA; AND BRIAN
WILLIAMS, WARDEN,
Respondents.

No. 77315-COA

ORDER OF AFFIRMANCE

Matthew Miyashiro-Amer appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed in district court case number C-17-326489-1 on May 21, 2018, (Docket No. 77314), and a district court order denying a postconviction petition for a writ of habeas corpus filed in district court case number A-18-780057-W on August 28, 2018, (Docket No. 77315).¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

¹These appeals have 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).

Docket No. 77314:

Miyashiro-Amer claimed in his first postconviction habeas petition that defense counsel coerced him into pleading guilty by saying he did not have time to investigate the case. The district court found that these were “bare and naked allegations that are clearly belied by the record” and Miyashiro-Amer’s “[guilty] plea agreement indicates he entered this plea freely and voluntarily and was not coerced at the time.”

We note that Miyashiro-Amer did not show how a better investigation would have made a more favorable outcome probable, *see Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004), or demonstrate that but for the lack of investigation he would have insisted on going to trial, *see Kirksey v. State*, 112 Nev. 980, 997-88, 923 P.2d 1102, 1107 (1996). And we conclude the district court’s findings are not clearly wrong and the district court did not err by rejecting Miyashiro-Amer’s bare and naked postconviction claim. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (explaining a petitioner is not entitled to postconviction relief if his claims are bare or naked).

In his petition, Miyarshiro-Amer also summarily requested the appointment of counsel. NRS 34.750 provides for the discretionary appointment of postconviction counsel and sets forth several factors the court may consider when making its determination. “[T]he decision whether to appoint counsel under NRS 34.750(1) is not necessarily dependent upon whether a pro se petitioner has raised claims that clearly have merit.” *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017).

The district court summarily denied Miyarshiro-Amer’s request for counsel, and cited *Peterson v. Warden*, 87 Nev. 134, 136, 483 P.2d 204,

205 (1971), in support of its decision. To the extent the district court declined to appoint counsel based on a conclusion that Miyarshiro-Amer's claims were frivolous, this was improper. *See Renteria-Novoa*, 133 Nev. at 77, 391 P.3d at 762. Nevertheless, because Miyarshiro-Amer made no argument in support of his request for counsel, we conclude the district court did not abuse its discretion by declining to appoint counsel.

Docket No. 77315:

Miyashiro-Amer claimed in his second postconviction habeas petition that defense counsel was ineffective for failing to file a notice of appeal, conspiring with the State to trick and coerce him into entering the plea agreement, promising a sentence of 3 to 10 years, failing to investigate, and failing to challenge the blood test results on the basis that the sample was collected more than two hours after the collision. The district court found that Miyashiro-Amer's petition was successive and an abuse of the writ because he had previously filed a postconviction habeas petition, he failed to demonstrate good cause for relitigating claims he raised in his prior petition, and he failed to demonstrate good cause for litigating new claims that he could have raised in his prior petition.

We conclude the district court's findings are not clearly wrong and the district court did not err by denying Miyashiro-Amer's second habeas petition as procedurally barred. *See* NRS 34.810(2); NRS 34.810(3); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("Application of statutory procedural default rules to post-conviction habeas petitions is mandatory."); *see generally* *Washington v. State*, 104 Nev. 309, 311, 756 P.2d 1191, 1193 (1988) (postconviction claims that have been resolved in a final disposition may not be relitigated through successive petitions).

Having concluded Miyashiro-Amer is not entitled to relief, we
ORDER the judgments of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Matthew Miyashiro-Amer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk