

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH ALIANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71494

FILED

JUN 15 2017

ELIZABETH BROWN
CLERK OF DISTRICT COURT
BY *Amilca*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joseph Aliano appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Aliano filed his petition on May 31, 2016, more than two years after entry of the judgment of conviction on April 2, 2014.² Thus, Aliano's petition was untimely filed. See NRS 34.726(1). Moreover, Aliano'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.³ See NRS 34.810(2). Aliano's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

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


²Aliano did not pursue a direct appeal.

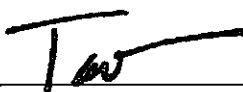
³*Aliano v. State*, Docket No. 69642 (Order of Affirmance, April 20, 2016).

Aliano argued he had good cause due to the ineffective assistance of postconviction counsel during the district court and appellate proceedings concerning his prior petition. However, ineffective assistance of postconviction counsel was not good cause in the instant case because the appointment of counsel was not statutorily or constitutionally required. See *Brown v. McDaniel*, 130 Nev. ___, ___, 331 P.3d 867, 871-72 (2014); *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997). Therefore, the district court did not err in denying this petition as procedurally barred.

Next, Aliano argues the district court erred in denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record, and if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008) (noting a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars). The district court concluded Aliano's claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. Therefore, the district court properly denied the petition without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Scott N. Freeman, District Judge
Joseph Aliano
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk