

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70126

FILED

JUN 14 2017

ELIZABETH A. FLOWN  
CLERK OF SUPREME COURT  
BY *Amolca*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ferrill Joseph Volpicelli appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on April 23, 2013.<sup>1</sup> Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

First, Volpicelli claims the district court erred in denying his claim that defense counsel was ineffective for failing to protect him from the habitual criminal adjudication. Although the district court reached the merits of this claim, we conclude the claim was procedurally barred and should have been denied as such. Volpicelli's good-cause basis for raising this claim a second time became available in 2008, but Volpicelli did not pursue the claim until 2013 when he filed his second habeas petition. Because the claim was not pursued within a reasonable period of time after its basis became available, we conclude it was procedurally barred and the district court reached the right result in denying the claim. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003) (new

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

claims must be raised within a reasonable period of time after they become available); *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court will affirm the judgment of a district court if it reached the right result albeit for a wrong reason).


Second, Volpicelli claims the district court erred by lifting the stay on his habeas petition prematurely. The district court granted Volpicelli's motion for a stay of his habeas proceedings pending the results of an appeal he had filed in the Nevada Supreme Court. However, the district court lifted the stay more than two years later because the petition had not been addressed. We conclude the district court did not abuse its discretion in this regard. See *Maheu v. Eighth Judicial Dist. Court*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973) (recognizing the inherent power of "every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants" (internal quotation marks omitted)).

Third, Volpicelli claims the district court erred by finding the first 22 claims raised in his habeas petition were successive. Volpicelli appears to claim an amended judgment of conviction that was entered after his first habeas petition was decided and before the instant petition was filed rendered these claims not successive and reviewable. In resolving Volpicelli's first habeas petition, the district court denied claims 1, 2, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 21, and 22 on their merits and dismissed claims 3, 4, 5, 6, 10, 13, and 20 because they could have been raised on direct appeal. We conclude the district court did not err in finding these claims were procedurally barred and Volpicelli failed to demonstrate good cause and actual prejudice to overcome the procedural bars. See NRS 34.810(1)(b), (2), (3).

Fourth, Volpicelli claims this court should review claims 3, 5, 10, 12, 13, 16, 21, and 22 for plain error. However, because the district court properly determined Volpicelli's claims are procedurally barred and Volpicelli failed to demonstrate good cause and actual prejudice to overcome the procedural bars, Volpicelli's claims have defaulted and may not be considered on appeal. *See State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (explaining the application of procedural bars is mandatory).

Having concluded Volpicelli is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Elliott A. Sattler, District Judge  
Ferrill Joseph Volpicelli  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk