

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GILBERT WHITE,
Appellant,
vs.
ISIDRO BACA, WARDEN
Respondent.

No. 69968

FILED

OCT 18 2016

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant Gilbert White filed his petition on November 23, 2015, more than seven years after entry of the judgment of conviction on February 15, 2008.² Thus, White's petition was untimely filed. *See* NRS 34.726(1). Moreover, White'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). White's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3). Moreover,

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

²White did not pursue a direct appeal.

³*White v. Warden*, Docket No. 60726 (Order of Affirmance, May 13, 2013).

because the State specifically pleaded laches, White was required to overcome the rebuttable presumption of prejudice. See NRS 34.800(2).

White first argues he has good cause because a fellow inmate took his legal materials in 2013 and refused to return them. White asserts he informed correctional officers about this matter and the officers refused to help him retrieve his legal materials. White fails to demonstrate this issue provided good cause. As White was convicted in 2008, loss of his legal materials in 2013 does not explain White's entire delay or why he could not raise his current claims in his previous, timely-filed petition. See *Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Therefore, White fails to demonstrate an impediment external to the defense prevented him from raising his claims in a timely petition.


Second, White argues he has good cause because he does not have access to the prison law library and has to rely upon an inmate paging system for legal research. White also argues he has good cause because the prison lacks persons with legal training to help him with his case.


White fails to demonstrate lack of access to the law library or legal assistants deprived him of meaningful access to the courts. See *Lewis v. Casey*, 518 U.S. 343, 351 (1996) ("an inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is subpar in some theoretical sense"). White filed a previous postconviction petition for a writ of habeas corpus and additional documents in the district court, which indicated his access to the court was not improperly limited by restrictions on access to the prison law library or legal assistants. See *id.* (a prisoner must "demonstrate that the alleged shortcomings in the library or legal assistance program


hindered his efforts to pursue a legal claim.”). Moreover, White did not demonstrate any of his claims could not have been raised in his prior petition, and therefore, he fails to demonstrate official interference caused him to be unable to comply with the procedural bars. *See Hathaway*, 119 at 252, 71 P.3d at 506.

In addition, White does not overcome the rebuttable presumption of prejudice to the State because he does not demonstrate a fundamental miscarriage of justice has occurred. *See NRS 34.800(1)(b)*. Therefore, we conclude the district court did not err in dismissing the petition as procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Patrick Flanagan, District Judge
Gilbert White
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk