

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALBERT OCHOA DURAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69267

FILED

MAY 18 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Appellant Albert Ochoa Duran filed his petition on October 20, 2015, more than two years after entry of the judgment of conviction on June 19, 2013.¹ Thus, Duran's petition was untimely filed. *See* NRS 34.726(1). Moreover, Duran's petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus and the previous petition was denied on the merits.² *See* NRS 34.810(2). Duran's petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).


Duran did not attempt to argue good cause to overcome the procedural bars, and he fails to demonstrate the district court erred in

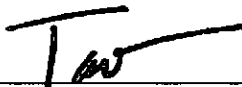
¹No direct appeal was taken.


²Duran filed his previous petition on October 20, 2014. He did not appeal the district court's denial of that petition.

denying his petition. *See State v. Haberstroh*, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003) (explaining the petitioner has the burden of pleading and proving facts to overcome the procedural bars). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kimberly A. Wanker, District Judge
David H. Neely, III
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk