

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN ROHN GILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78298-COA

FILED

DEC 20 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kevin Rohn Gill appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 5, 2018. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Gill argues the district court erred by not reaching the merits of the claims raised in his petition. However, Gill filed his petition nearly 10 years after issuance of the remittitur on direct appeal on October 10, 2008. *Gill v. State*, Docket No. 46957 (Order of Affirmance, July 10, 2008). Thus, Gill's petition was untimely filed. See NRS 34.726(1). Moreover, Gill'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.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Gill's

¹*Gill v. State*, Docket No. 64325 (Order of Affirmance, November 12, 2014).

petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

First, Gill argued he had good cause to overcome the procedural bars because he had insufficient legal knowledge and had to rely on inmate law clerks to help him prepare his petition. Gill's lack of legal knowledge and his reliance on inmate law clerks were not impediments external to the defense, and therefore, did not overcome the procedural bars. See *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Accordingly, we conclude the district court did not err by denying this claim.

Second, Gill argued he had good cause to overcome the procedural bars because he had newly discovered evidence that he was not arraigned within a timely manner following his arrest. Gill claimed he did not receive the minutes from his justice court proceedings until 2018, and therefore, he did not know of the existence of his claim until now. A petitioner may show good cause to overcome the procedural bars by demonstrating that a factual or legal basis for a claim was not reasonably available. *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Here, Gill failed to demonstrate the factual basis of this claim was not reasonably available to be raised in a more timely manner. Gill was present for his arrest and arraignment, and therefore, had the knowledge necessary to raise this claim earlier. Therefore, we conclude the district court did not err by denying this claim.

Third, Gill argued he had good cause because trial counsel was ineffective for failing to raise a claim concerning his untimely arraignment. The underlying claim of ineffective assistance of counsel was reasonably

available to have been raised during the statutory time period for filing a postconviction petition, and therefore, Gill failed to demonstrate good cause for not raising this claim in his previous timely-filed petition. *See id.* Accordingly, we conclude the district court did not err by denying this claim.

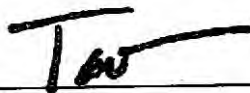
Fourth, Gill argued his claim regarding his late arraignment should be heard on the merits despite the procedural bars because it amounted to structural error. Gill failed to demonstrate that, even if true, his claim amounted to structural error because he failed to demonstrate his late arraignment deprived him of "basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence." *Neder v. United States*, 527 U.S. 1, 8-9 (1999) (internal quotation marks omitted). Therefore, we conclude the district court did not err by denying this claim.

Fifth, Gill argued his petition should not be procedurally barred because he filed it pursuant to FRCP 60(b)(6). Gill failed to demonstrate he was entitled to relief. The Federal Rules of Civil Procedure do not apply in Nevada state courts. To the extent Gill's petition could be construed to be raising a claim under the Nevada Rules of Civil Procedure, this claim lacks merit. The Nevada Rules of Civil Procedure only apply in postconviction proceedings to the extent they are not inconsistent with NRS 34.360 to NRS 34.830. *See* NRS 34.780(1). NRCP 60(b), which is the state equivalent of FRCP 60(b), is inconsistent with the statutory deadline setting forth the timely filing of a postconviction petition for a writ of habeas corpus in NRS 34.726 and the procedural bars set forth in NRS 34.800 and NRS 34.810.

Therefore, we conclude the district court did not err by denying this claim.
Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Lynne K. Simons, District Judge
Kevin Rohn Gill
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²We conclude the district court did not err by denying Gill's motion for transcripts.