IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK HEARRING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78791-COA

FILED

DEC 20 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Frank Hearring, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 25, 2019. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Hearring, who did not appeal his conviction, filed his petition more than five years after entry of the judgment of conviction on December 30, 2013. Hearring's petition was therefore untimely filed. *See* NRS 34.726(1). Because he raised claims new and different from those raised in his prior petition, Hearring's petition was also an abuse of the writ.[1] *See* NRS 34.810(2). Hearring's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

"In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." *Hathaway v. State*, 119

[1]*See Hearring v. State*, Docket No. 68968 (Order of Affirmance, April 14, 2016).

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Nev. 248, 252, 71 P.3d 503, 506 (2003). And the good cause claim must explain the entire delay. *See id.* (a good cause claim must itself not be procedurally barred). To warrant an evidentiary hearing on his good cause claims, Hearring's claims could not be bare but had to allege specific facts that, if true and not belied by the record, would have entitled him to relief. *See Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1155 (2015).

Hearring first claimed he had good cause because the district court should have construed his motion to withdraw his guilty plea, filed in 2014, as a postconviction petition for a writ of habeas corpus. Hearring did not appeal the district court's denial of his motion, and he has not explained the four-year delay between the denial of the motion and the filing of the instant petition.

Hearring next claimed he had been waiting on his documents and records and he did not learn of the alleged due process violations until after his conviction was affirmed. Hearring's bare claims did not identify what documents or records he needed or why they were necessary to his petition. They also failed to specify when he learned of the alleged violations or how an impediment external to the defense prevented his learning of them.

To the extent Hearring claimed he had good cause to reraise claims because they are relevant to these proceedings, he failed to explain why mere relevance should allow him to overcome the procedural bars. And to the extent Hearring claimed his actual innocence should overcome a procedural bar, he did not demonstrate actual innocence because he failed to show that "in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him." *Bousley v. United States*, 523 U.S. 614, 623 (1998) (internal quotation marks omitted); *see also Mazzan v.*

Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). For the foregoing reasons, we conclude the district court did not err by denying Hearring's petition as procedurally barred.

Finally, the district court denied Hearring's motion to appoint postconviction counsel. The issues Hearring presented were not difficult, he appeared able to comprehend the proceedings, and it does not appear counsel was necessary to proceed with any discovery. We therefore conclude the district court did not abuse its discretion by denying Hearring's motion for the appointment of postconviction counsel. *See* NRS 34.750(1); *see generally Renteria-Novoa v. State*, 133 Nev. 75, 391 P.3d 760 (2017). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons

_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Frank Hearring, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[2]The Honorable Jerome T. Tao did not participate in the decision in this matter.